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4 CLASSIFICATION STANDARDS REGULATION

5 CONSULTATION MEETINGS

6 BEFORE THE

7 NATIONAL INDIAN GAMING

8

9 Thursday, July 27, 2006

10 9:49 a.m. - 3:30 p.m.

11 Doubletree Hotel

12 Ontario, California

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17 REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

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23 Reporter: G. Joanne Bergren, CSR, RPR
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1 LYTTON BAND OF POMO INDIANS

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3 CHAIRMAN HOGEN: We'll go ahead and
4 commence.

5 I'm Phil Hogen, Chairman of the National
6 Indian Gaming Commission. We welcome you here to
7 the government-to-government tribal consultation
8 session. We're convened in Ontario, California on
9 the 27th of July, 2006, pursuant to proposed
10 regulations of the National Indian Gaming Commission
11 published in the Federal Register on the 25th of May
12 of this year. Those relate to definitions and
13 proposed regulations that would address how you
14 distinguish electronic and technologic aids which
15 can be used for Class II gaming that can be
16 conducted without a tribal/state compact and
17 electronic facsimiles of games of chance that
18 require compacts with the states to play.

19 Here on behalf of the commission is Chuck
20 Choney, the Associate Commissioner, and myself, as

21 well as Joe Valandra, our Chief of Staff; Michael
22 Gross and John Hay, who are in the Office of the
23 General Counsel; and Eric Schalansky, who is our
24 Regional Director from Sacramento. Natalie Hemlock
25 is an assistant to the Commission in the D.C.

1 office, and Alan Phillips is in the Sacramento
2 office. He's an investigator there.
3 So if you would please introduce yourselves
4 and tell us your affiliation with the tribe and
5 gaming, that would permit the court reporter to know
6 who's saying what. And then we'd very much like to
7 hear your comments with regard to what we've
8 proposed.

9 MR. STIDHAM: My name is Larry Stidham.
10 I'm general counsel for the Lytton tribe.

11 MS. TOMARAS: Brenda Tomaras, tribal
12 attorney.

13 MS. OGAS: Kathryn Ogas, tribal attorney
14 for Lytton.

15 MS. TOMARAS: And we also requested, just
16 as technical assistance, if necessary, a couple of
17 people from IGT attend as well.

18 MR. CHAMBERLAIN: John Chamberlain, IGT.

19 MR. KNUDSON: Knute Knudson.

20 MR. CHONEY: Why are there no Lytton tribal

21 members here?

22 MR. STIDHAM: I'll address that.

23 Chairman Mahia sends her apologies. She
24 was in meetings all day yesterday and wasn't able to
25 make it down today. She sends her regards and asked

1 me to speak for her.

2 MR. CHONEY: This is unprecedented. As
3 this is a government-to-government consultation, it
4 would be kind of nice if the vice chairman or Tribal
5 Council member could have been here.

6 MR. STIDHAM: I'll take that message back
7 to her, but as I say, it's quite a ways for us to
8 come down.

9 MR. CHONEY: We came a long way ourself.

10 MR. STIDHAM: I appreciate that.

11 MR. CHONEY: Please proceed.

12 MR. STIDHAM: I'd just like to make an
13 opening statement in terms of the background of
14 Lytton, where they're located and what their current
15 situation is. And I know that we've met before, had
16 those discussions in the past, but I want to refresh
17 your memory a little bit.

18 As you know, the Lytton tribe was one of
19 the tribes in California that was terminated in the
20 early 1960s in a lawsuit that we've referred to as

21 the Scott's Valley case. In 1991, they were
22 successful in having that termination being
23 recognized by the court as being unlawful. And as
24 part of that settlement, though, the Justice
25 Department and Sonoma County, in terms of a

1 stipulation, the tribe was not able to, even though
2 they were being what we would consider to be
3 restored, we were not able to game within our
4 aboriginal territory, which would have been Sonoma
5 County. They were foreclosed in a stipulation in
6 getting the land from doing so.

7 So in terms of their ability to game within
8 their aboriginal territory, it's nonexistent at this
9 point in time. So what they did then is start to
10 look to acquire land; to acquire lands, maybe, for
11 housing, for economic development, and for gaming
12 purposes. They looked at various different
13 locations as close as possible to the aboriginal
14 territory, and what they did find was a card room in
15 San Pablo, which is about 65, 70 miles away on what
16 we refer to as the East Bay. There was a card room
17 that was built in maybe 1994 by the Labarope
18 (phonetic) Corporation. That was with a referendum
19 by the City of San Pablo, who wanted that card room
20 there.

21 They constructed that card room. It began
22 in operation and, just frankly, didn't do very well.
23 So in terms of looking at the needs of the City,
24 which was receiving revenue from Labarope, and the
25 needs of the tribe, it seemed to be a very good

1 mesh. And what they did then was worked to see
2 whether that land could be taken in trust under the
3 restored exceptions to the Indian Gaming Regulatory
4 Act.

5 There was an informal decision made by the
6 Bureau of Indian Affairs that they weren't going to
7 allow that. They didn't see it fitting as restored
8 lands because of the fact that it was not within
9 that aboriginal territory or not close enough to
10 have those types of ties, even though we tried to
11 explain that the reason we can't go any closer to
12 our aboriginal territory is the lawsuit itself.

13 So with that, the tribe was able to talk
14 with George Miller, who was able to put in specific
15 language that would allow basically a backdating so
16 that the land was acquired after 1988, but still was
17 then allowed -- gaming was allowed to occur because
18 it was backdated, saying this land would have been
19 deemed to be been acquired prior to 1988.

20 So with that, the tribe attempted to get a

21 compact. I'm sure you're all familiar with that.
22 That did not work. The legislature refused to
23 ratify a compact for the tribe, and that compact has
24 been withdrawn.
25 So since that time, the Lytton tribe has

1 operated Class II machines in the San Pasqual
2 casino. We have 803 machines operating now; we
3 anticipate that we will have probably 200 more by
4 October, so we would be operating about 1,005
5 machines, all Class II. We worked with the IGT in
6 terms of, as you well know, making sure those
7 machines are as close to compliant with the current
8 regulations as you have guys have looked at in terms
9 of the letters and is the communications you've had.
10 We think we're compliant with that.

11 The machines are doing quite well. The
12 tribe has been able to benefit greatly from those
13 machines as well as has the City of San Pablo. We
14 earned \$110 million last year. That's a poor
15 community. That's provided them with a lot of
16 revenues that kept that city out of bankruptcy. So
17 in terms of Class II working in California for the
18 Lytton tribe, it's working very well.

19 Now, as far as providing dollars to the
20 tribe, we have a certain amount of per capita that

21 goes to the tribe, compliant with the Tribal Revenue
22 Allocation Plan. But more than that, we have tribal
23 programs for the first time that are providing
24 healthcare, housing. We have an agreement with the
25 local Indian healthcare where we provide additional

1 dollars to them and are able, then, to provide
2 excellent healthcare to our tribal members. We are
3 now sending kids to school, to college, to
4 vocational training, all that sort of thing.

5 So it has worked. Class II does work very
6 well, at least in the setting that's presented for
7 the Lytton tribe.

8 And I think the concern that the tribe has
9 at this point -- we understand your desire to make a
10 distinction between Class II and Class III. We
11 understand that. What we're urging you to do is
12 take into careful consideration the economics of
13 that so that if you're making a machine that is
14 slower, and that's really what -- as we view the
15 regs, it slows things down. If you get to a point
16 where it no longer becomes economically viable, that
17 will have a devastating impact on the Lytton tribe.

18 We are not going to be able to get a
19 compact through the state of California unless the
20 political climate changes, and it hasn't changed

21 recently, and I don't envision that occurring in the
22 near future or if ever in terms of the situation
23 with Lytton.

24 That would result, then, in a lawsuit and
25 going through that whole process. So we're relying

1 on Class II to provide the economic backbone for
2 this tribe, and we ask that you consider that very
3 carefully when you look at the implementation of
4 these regs. It really needs to be balanced. If you
5 have a situation where you can look at regs that
6 don't impact us economically, that don't slow down
7 that machine any more than we have, that's something
8 we'd like you to consider.

9 With that, I'll let Kathy and Brenda talk a
10 little bit more about the regs with specificities.

11 MS. TOMARAS: I was going to say one of the
12 things we were hoping to get out of the
13 consultation, since it is a consultation, that it be
14 more of a dialogue rather than just us presenting
15 our comments to you.

16 So to the extent that, you know, we can
17 have a dialogue, we would appreciate that.

18 MS. OGAS: We plan on submitting written
19 comments discussing the full spectrum of all of our
20 issues, but we picked some of the bigger ones to

21 discuss here, since we only have half an hour.

22 So what I want to start with is the release

23 of numbers designations requirement in 546.6(c).

24 And there's actually two portions of that that kind

25 of trouble us.

1 The first one is the minimum two-second
2 release rule. First of all, we're kind of curious
3 with what's added. I mean, I understand the intent
4 of that is to give players time to see the numbers.
5 But we already have the two-second daub rule, and by
6 adding this two-second requirement to that, it's
7 going to extend the game for such a period that we
8 believe players are going to become bored and aren't
9 going to be able to even pay attention. It's going
10 to actually be worse. Their attention is going to
11 be shifted.

12 And then on the other side of that is
13 the -- there's the requirement that the numbers be
14 released one at a time. First of all, we're not
15 quite sure. Can you tell us, is it numbers being
16 from the server to the terminal, or is the intent
17 that the numbers actually be released on the display
18 screen one at a time?

19 CHAIRMAN HOGEN: I think we would expect
20 that they would appear on the display screen one at

21 a time. And that can be a pretty rapid succession.

22 MS. OGAS: Well -- and we understand that

23 that's -- that's the intent, but we've also had --

24 and I'm going to let John Chamberlain, from IGT,

25 address this a little because it's a very technical

1 aspect. We understand that given the amount of
2 numbers, you know, sometimes the release can be 65
3 numbers at a time. That when it's that many, even
4 with the speed of a computer, it's going to take
5 well over 10 seconds.

6 And, John, could you briefly --

7 MR. CHAMBERLAIN: Yes.

8 Based on the refresh rate of a lot of
9 monitors out there, you can expect to get one ball
10 about every one-tenth of a second. So that really
11 stretches that out, on a 75-ball release, seven and
12 a half seconds it would add to the game and,
13 therefore, diminish the playability of the game.

14 MR. GROSS: John, can I just ask
15 clarification on something? I'm not quite sure I
16 caught that.

17 The intent, as this was written, was that
18 there be a two-second window for the release of
19 balls at the beginning of the game, however many
20 that might be, release of balls seriatim.

21 Are you saying that there is a -- there is
22 a technical limitation here that you can't -- if you
23 took a game such as one of yours that I'm familiar
24 with, and you're releasing on average about 60-odd
25 balls -- let's call it 60 for a round number -- in

1 the first release.

2 MR. CHAMBERLAIN: First release, yes.

3 MR. GROSS: Right. The Commission's
4 intention was that those 60 balls could be released
5 seriatim within that two seconds, but you're saying
6 there's a technical limitation that doesn't make
7 that possible?

8 MR. CHAMBERLAIN: Yes. My understanding of
9 the way that the PC operating system works and the
10 refresh rate is that the initial release of 60 balls
11 would take closer to six seconds than the two
12 seconds. You can release one and actually draw it
13 up there and get the animation and do it right in
14 about one-tenth of a second. So you're going to
15 add -- it won't be two seconds, it will be six
16 seconds.

17 CHAIRMAN HOGEN: We would much appreciate,
18 maybe, a more technical explanation of that. We're
19 learning in this area as well, and if we have
20 unrealistic expectations of what technology can do,

21 why, we'd like to have some clarification in that

22 regard.

23 MR. STIDHAM: And in terms of IGT preparing

24 that type, it is my understanding you're working on

25 that now, correct?

1 MR. CHAMBERLAIN: Right.

2 MR. STIDHAM: In terms of something that we
3 could submit. And what we would like to do, then --
4 and we have till -- what? -- August 23rd?

5 MS. OGAS: August 23rd.

6 MR. STIDHAM: We're working on that in
7 terms of the technical stuff.

8 We wanted to raise that now. In terms of
9 the technical things, we're relying on IGT. And we
10 do intend to provide you with specific technical
11 comments on that.

12 MR. CHAMBERLAIN: I will go back and draft
13 documents and send them to the tribe -- and I'll let
14 the tribe submit them directly to the NIGC -- that
15 may address the technical details to the Commission.

16 CHAIRMAN HOGEN: Okay. Before we get too
17 far down the road and I forget about this, a couple
18 of the opening comments here, I'd like to clarify a
19 little bit.

20 You mentioned compliance with the current

21 regulations, I think. Well, there's, I guess,
22 something of a regulatory framework here that we're
23 all trying to do business within, but the problem is
24 we don't have current regulations, so to speak, or,
25 more specifically, with regard to this distinction.

1 That's why we're trying to come up with something.

2 And, secondly, with respect to the devices

3 I understand you are playing that are provided by

4 IGT, we have prepared a number of advisory opinions

5 for a number of vendors, and some of their machines

6 are being played in accordance with those advisory

7 opinions and some are not. And we have been working

8 with IGT to come up with an advisory opinion for the

9 IGT Class II game, but we aren't there yet. But we

10 did have discussions with them, and we are aware

11 that they were going forward, and we said we

12 wouldn't take a dim view of that at this stage.

13 In the recent advisory opinions, we have

14 always put a disclaimer therein, saying, "At the

15 current time, this is our opinion." And it's not

16 final agency action, it's just that, an opinion,

17 that this would embody the characteristics of

18 Class II play.

19 But we have on the drawing board a set of

20 regulations, and maybe change is required once those

21 regulations are final. But I think that's the
22 approach that we hope IGT understood, you know,
23 would be taken with respect to their advisory
24 opinion.

25 MR. STIDHAM: I certainly can't speak for

1 IGT, but from a tribal perspective, I think the
2 point I was trying to make is we generally want to
3 work with NIGC. We want to stay within the
4 framework and the guidelines that the National
5 Indian Gaming Commission is comfortable with in
6 terms of operating those types of machines.

7 MS. TOMARAS: Okay. And as we said, we'll
8 be submitting more detailed comments in the letter.

9 CHAIRMAN HOGEN: Let the record show that
10 the lawn is being mowed nicely.

11 MR. VALANDRA: At least persistently.

12 MS. TOMARAS: Right. One of the other
13 issues we had, and we want a little bit of
14 clarification on, is the ultimate pay, the
15 20 percent pay in 546.4(j).

16 One of the questions we had -- and again,
17 this is another technical aspect -- is the intent of
18 that language that it averages 20 percent or that
19 it's always 20 percent? Because, again, from our
20 technical expertise that we're understanding from

21 IGT, the mathematical formulations for always paying
22 out 20 percent doesn't work. So the question is,
23 you know, is the intent of the regulations that, you
24 know, you're averaging the 20 percent plus the
25 penny, or that you're looking for an absolute

1 20 percent?

2 CHAIRMAN HOGEN: Michael, do you want to
3 address that?

4 MR. GROSS: When the Commission first had
5 drafted that as a proposal, the thinking was simply
6 that it be 20 percent, since that's evenly divisible
7 into most denominations. The -- in working with
8 IGT, the request was made to make the 20 percent an
9 average, and that's how we have been proceeding with
10 the real touch.

11 The Commission hasn't put pen to paper yet
12 for the purpose of explaining that for the final --
13 for the final release, but that's something that the
14 Commission is considering. And we'll clarify that
15 when we get -- if and when we ever get to the end of
16 the line.

17 (Ms. Coleman entered the room.)

18 MR. GROSS: Is that a fair explanation,
19 Mr. Chairman?

20 CHAIRMAN HOGEN: Let me say a little bit

21 about why we did this. We were trying to put
22 ourselves in the shoes of Congress when they enacted
23 this in 1988 and allow for technologic advances
24 which have been dramatic since that time. But some
25 of the models that have been proposed to us to be

1 classified as Class II really turned bingo on its
2 head. That is, in the original bingo paradigm, the
3 object was to win the bingo game. And if winning
4 the bingo game becomes so inconsequential, that is,
5 just a subterfuge to play, you know, in other words,
6 another game, then we think we've gone too far from
7 that game commonly known as bingo that Congress had
8 in mind.

9 And to say that, you know, you must pay at
10 least a meager amount, 20 percent of the amount that
11 you bet, doesn't seem too extreme. Now, I
12 understand when you get to crunching these numbers
13 and giving away big prizes that will attract
14 players, sometimes it gets kind of out of whack.
15 And maybe there's a way to do this so occasionally
16 you can miss that target, but if that becomes the
17 rule rather than the exception, then I think we've
18 gone too far. And that's what we're trying to do.

19 MS. OGAS: Well, and I think for us, it's
20 just an issue of what can technically be done. It's

21 not the fact that -- we've been told you can't
22 always get the 20 percent. You couldn't -- even if
23 it was 15 percent, you couldn't say always 15
24 percent. It would have to be the average. I think
25 that's the major problem for us, is just the

1 technical ability to do it, whether we can make a
2 machine that did that.

3 MS. TOMARAS: Another issue that we had,
4 and we're not going to say a whole lot about this,
5 we've got some written commentary that we're going
6 to submit for the record regarding the common pays,
7 patterns, and probabilities and -- partially because
8 it's a highly technical issue. And we're going to
9 have John say a little bit about that, but we do
10 have some written comment that we'd like to submit
11 on the record just initially with respect to that.

12 CHAIRMAN HOGEN: Thank you.

13 MS. TOMARAS: And then we'll turn it over
14 to John.

15 MR. CHAMBERLAIN: Maybe the simplest
16 summary is there are a couple of different ways in
17 some common pays, patterns, and probabilities
18 conflict with what's do-able and commercially viable
19 in the way of development of Class II.

20 I will assume that Michael understands the

21 vast majority of those issues for the moment. And
22 that document there just briefly outlines our
23 concerns, and should there be a desire for further
24 dialogue after you've had a chance to digest that,
25 we'd be happy, either as representatives of the

1 tribe or consultants to the tribe, or as
2 representatives of IGT, to make ourselves available
3 to discuss that further.

4 CHAIRMAN HOGEN: Okay. Thank you.

5 MS. OGAS: I think we have one final thing.
6 I think it should just take us about to the end.
7 And that was the requirements on the display of the
8 game in 546.4(b). And, again, we understand what
9 the NIGC is trying to get at. You want to make sure
10 that it is a bingo game and players actually can see
11 that it's a bingo game. But I think there's a
12 number of problems with requiring the 50 percent.
13 First off, we're not even sure what the
14 50 percent -- it says the display must be one half
15 of the total display. We're not sure, you know,
16 given the split screens -- often we have two, one
17 for the alternative -- if that means separate
18 screens.
19 And I think we also think there might be a
20 better way, a percentage way. I mean, we haven't --

21 we'll work that more out in our comments. But the
22 50 percent is just really hard to go by, because
23 some of the bingo displays, matter of fact, on our
24 machines is actually on the alternative display too.
25 So it's hard to say what is and what isn't.

1 And I also think it wouldn't necessarily
2 get you where you wanted to go, because we could
3 just -- somebody could make a smaller display, and
4 then you'd only have to fill up half of that
5 display. And it could be small where they couldn't
6 see it. So we're thinking a percentage, it might be
7 better to modify that to maybe more a percentage of
8 the display.

9 MS. TOMARAS: Yes. Some sort of variable.
10 You know, no more than "X" percent or no less than
11 "X" percent.

12 And one of the other --

13 CHAIRMAN HOGEN: Just a minute.

14 MS. TOMARAS: Mm-hmm.

15 CHAIRMAN HOGEN: If we say at least
16 50 percent, and you're saying no that's all wrong,
17 say no more than 50 percent, I don't understand the
18 difference.

19 MS. TOMARAS: Well, if you say at least
20 50 percent, you're still, you know, at 50 percent or

21 over. And you can have a screen that's, say,
22 four -- I mean, a display, total display that's 45,
23 46 percent that still is readily visible, still gets
24 to the intent. But, you know -- and part of it is,
25 you know, at this point what's in play now?

1 And the requirements for tribes like
2 Lytton, who have so many machines, to change out
3 each and every console at this point, I mean, that's
4 a significant capital expenditure just in and of
5 itself.

6 MS. OGAS: And I think John has a little
7 bit to add for us.

8 MR. CHAMBERLAIN: Maybe if I could clarify
9 a little bit.

10 There are elements of the game that are
11 clearly bingo: ball release, card. That's clearly
12 bingo. There are elements that are clearly the
13 entertaining display, which I would argue is the
14 exact area in which those reels reside in. And then
15 there are areas that are in between, which they
16 arguably construed as either side.

17 And I think what the tribe is trying to
18 convey is that a standard of at least 50 percent of
19 the game must be bingo is very difficult to adhere
20 to in that the standard we would request -- the

21 tribe would request would be that the entertaining
22 display be no more than, because it's easy to find
23 what the entertaining display is and, therefore,
24 factor out everything not entertaining display. And
25 it's easier to come up with a meaningful standard of

1 the entertaining display cannot be more than
2 50 percent, because it becomes more of a trying to
3 prove a negative with the bingo display being at
4 least 50 percent.

5 Because, as I mentioned, there's bingo,
6 there's entertaining display, and there's no-man's
7 land. And, obviously, if no-man's land is construed
8 towards bingo, then we're probably, most
9 manufacturers would be good. If no-man's land is
10 construed to be entertaining display, then it
11 becomes very difficult.

12 And there's a number of subquestions that
13 come up. I can entertain those or bring those up.
14 For example, on a mechanical spinning reel display,
15 does the entertaining display -- is it just the
16 immediate area around the mechanical reels, or is it
17 the entire sheet of glass in front of the
18 entertaining display?

19 And I think we're just looking for
20 meaningful criteria in which we can evaluate that

21 and have it so that everyone in this room can look
22 at it and understand exactly what is entertaining
23 display or what is bingo display. It's too
24 subjective right now. It needs to be a little more
25 objective.

1 CHAIRMAN HOGEN: I think those are
2 legitimate concerns, and we, if we go this route,
3 would attempt not to be, you know, so technical that
4 if there were a red border around the place where
5 the bingo card was, we wouldn't say, "Aha, that's
6 not bingo, that's into the 50 percent of the
7 entertaining display." I would hope we would be
8 more reasonable than that.

9 But there is certainly, likely, a better
10 way to say it or a way to improve on what we've
11 said, and we would appreciate suggestions you might
12 have in that regard.

13 MR. CHAMBERLAIN: And, again, I can put
14 those in writing and submit those to the tribe, and
15 the tribe can submit those directly.

16 Our biggest concern is that -- we
17 understand that the NIGC is a very reasonable
18 agency. Unfortunately, people retire, terms expire,
19 and the next --

20 CHAIRMAN HOGEN: We hope so.

21 MR. CHAMBERLAIN: The concern is, is the
22 NIGC, in 15 years from now, if this is not
23 quantified, when everyone has changed 20 or 25 years
24 down the road, what do we really have? That's our
25 concern. You need to quantify it.

1 MS. OGAS: Thank you, John.

2 MR. STIDHAM: Did you have any other --

3 MS. OGAS: No. That's it.

4 MR. STIDHAM: I just had a general

5 question. In terms of coming up with the regs and

6 looking at the technical aspects of this, did the --

7 did the NIGC put a prototype together? Is there

8 something that you used that you can play to

9 actually see how this works, or is this basically

10 you're looking at wanting to make sure you make

11 these -- you know, the -- distinguish Class II and

12 Class III? And these are technical aspects, but you

13 don't really have a machine that's played this so

14 you can see how it is in terms of attracting this to

15 the -- to the, you know, player that comes in and

16 wants to play that machine?

17 CHAIRMAN HOGEN: Well, the laboratory, so

18 to speak, where some of this work has occurred or

19 thought has been given to this has primarily been

20 dealing with manufacturers as we've generated these

21 advisory opinions. We are, in fact, you know,
22 playing around with some computer models that might
23 better demonstrate this or whatever, and, you know,
24 maybe as we do more of that, we'll find that there
25 are difficulties with what we've suggested.

1 But we're trying not just to, you know, put
2 an artificial target out there that has no
3 experience or science behind it and then expect
4 folks to meet it. So --

5 MR. STIDHAM: And at the risk of getting
6 stabbed in the back or nudged here, because we
7 haven't really had a chance to talk about this. I
8 guess my concern is that in terms of playability,
9 that it would be important to see what a prototype
10 is, so that you could actually see people playing
11 it. You know, if they're falling asleep, then we've
12 got a problem, I mean, in terms of how it's set up.

13 And I guess that's the point I'm looking
14 at. Is it a viable machine or not? Until you move
15 it from the lab to an actual player-type situation,
16 I'm not sure that you really know how economically
17 viable it would be.

18 CHAIRMAN HOGEN: Well, yeah. And we'll try
19 to keep that in mind. But as we look back at
20 history, the main devices that the court cases

21 addressed were the MegaMania bingo terminals. Those
22 were kind of big, clunky terminals that you had to
23 have 48 bingo cards in play by 12 players before you
24 could start. And it took a minute or more to play
25 those games. And those folks didn't play -- didn't

1 fall asleep. They loved them.

2 Now, I realize that was before the Pac-man
3 age or whatever, and attention spans are undoubtedly
4 getting shorter, but for crying out loud, you could
5 play, you know, six of these games in a minute
6 compared to one of those games. So it's not as
7 though we're trying to just grind technology to a
8 halt. But your point is well-taken and we'll keep
9 that in mind.

10 MS. TOMARAS: I guess two final things.
11 One is, is there going to be a sort of general
12 public meeting at the end of all this? I think
13 somebody asked John about that at the Section 20,
14 and he said you guys were considering it, just for
15 all the tribal leaders to get together and actually
16 be able to hear, you know, what other tribal leaders
17 have to say.

18 CHAIRMAN HOGEN: Yes. We are seriously
19 considering the possibility. And I think it's
20 likely that we will have, before we conclude this

21 process, some public-type forum.

22 MS. TOMARAS: Okay. And finally, we've

23 extended the offer before, but I'd like to extend it

24 again, you know, you guys, we're more than happy to

25 have you come out to Lytton to see the casino

1 itself, see the play, see how the patrons interact
2 with the games to take a good look in that setting,
3 as Larry was saying.

4 CHAIRMAN HOGEN: Thank you. We'll attempt
5 to do that.

6 MS. COLEMAN: Can I ask one question? I've
7 forgotten. Lytton's machines, are they the
8 one-touch, two-touch, or three-touch machines?

9 MS. TOMARAS: The three-touch. You start,
10 you daub, you daub. And sometimes you daub again.

11 MS. COLEMAN: And then how many machines do
12 you have?

13 MR. STIDHAM: We have 805. We'll probably
14 have another 100 before Labor Day, and then we're
15 going to have probably another hundred by middle of
16 October. And that will be it for a while.

17 MS. COLEMAN: And then about how long does
18 it take to play one of these?

19 MR. STIDHAM: I'll look to you guys, but I
20 think it's about six seconds.

21 MR. CHAMBERLAIN: About six seconds.
22 MR. STIDHAM: About six seconds with the
23 three-daub.
24 MS. COLEMAN: Okay. Thank you.
25 CHAIRMAN HOGEN: All right. Well, thank

1 you for meeting with us. And we will take this
2 under consideration.

3 MS. OGAS: Thank you.

4 MS. TOMARAS: Thank you for the time.

5 MR. STIDHAM: Thank you for the
6 opportunity.

7 (End of Lytton Rancheria of California
8 discussions.)

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1 SAN PASQUAL BAND OF MISSION INDIANS

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3 CHAIRMAN HOGEN: Good morning. I'm Phil

4 Hogen, Chairman of the National Indian Gaming

5 Commission.

6 Present here on NIGC's behalf is Associate

7 Commissioner Chuck Choney. Today Chuck and I are

8 the full commission.

9 From our D.C. office, Joe Valandra, our

10 Chief of Staff is here, as are attorneys Michael

11 Gross and John Hay from the Office of the General

12 Counsel. Eric Schalansky is our Regional Director

13 from our Sacramento office. Natalie Hemlock is an

14 assistant to the Commission, and Penny Coleman is

15 our Acting General Counsel.

16 We are convened here in Ontario, California

17 on the 27th of July 2006, pursuant to proposed

18 regulations NIGC published in the Federal Register

19 on the 25th of May of this year that deal with

20 definitions and proposed regulations relating to how

- 21 one distinguishes technologic aids used to play
- 22 uncompact Class II gaming as opposed to electronic
- 23 facsimiles of games of chance that constitute
- 24 Class III gaming, for which one would have to have a
- 25 compact.

1 And we are eager to hear what San Pasqual
2 has to say with respect to these proposals. And as
3 you begin, perhaps you could first, on the record
4 here, introduce yourselves and tell us your
5 relationship with the tribal operation, and then the
6 reporter will know who's doing the talking.

7 MR. REEDY: I'm Randy Reedy, Vice President
8 of the slot operations.

9 MR. COPE: I'm Al Cope, a tribal member.
10 Vice president of the Casino Development Group which
11 operates Valley View Casino.

12 MR. GORCZYNSKI: I'm Michael Gorczynski. I
13 serve at the Chief Financial Officer for Valley View
14 Casino, as well as the secretary/treasurer for the
15 San Pasqual Casino Development Group.

16 MS. MONTEFORTE: And I'm Jenny Monteforte,
17 and I'm on the San Pasqual Casino Development Group
18 as a director, and I'm also a tribal member.

19 CHAIRMAN HOGEN: Well, we'd be happy to
20 hear your comments with respect to the proposals.

21 MR. COPE: Well, that's why we're waiting
22 for Joe. He had them. So he should be in here in
23 just a second.
24 I think -- just a little bit of history. I
25 think we're starting to -- our intent is to put some

1 Class II machines in. We currently have 1572

2 Class III licenses, and when we use those up --

3 We have 1260 on the floor now?

4 MR. REEDY: 63.

5 MR. COPE: 1263 on the floor. We'll use

6 the Class IIIs up. We're trying to get, at this

7 point in time, our other license up to the 2,000.

8 And we've got -- we're looking into that and trying

9 to figure out how they count these things so we can

10 get our 2,000. If we don't, our intent is to use

11 Class II license for the first time.

12 200 or so? Is that what we're looking at?

13 MR. GORCZYNSKI: A couple hundred. Once we

14 get into the expanded facility, we'll probably look

15 to place somewhere between 100 and 200 Class IIs

16 into operation to supplement our current 1,572

17 Class III games that we'll have in the expanded

18 facility.

19 As Al said, it's currently 1,263 in

20 operation. We just can't fit any more in the

21 casino. We would love to be able to do that if we
22 could. That's why we're expanding.
23 I understand NIGC has rewritten the
24 Class II requirement and put some more
25 qualifications on that.

1 I don't know if, Randy, if you would -- had
2 a chance to --

3 MR. REEDY: Just bits and pieces of it.

4 MR. GORCZYNSKI: -- look at that.

5 CHAIRMAN HOGEN: Yeah. Just to clarify
6 where we are, that's often been said, that we've
7 rewritten it. Actually, that's probably not exactly
8 accurate in that it hadn't been written before.
9 We're trying to write it for the first time, and
10 therein lies some challenge because we know the
11 world already exists, and we're going to try and not
12 disrupt that too much as we try to clarify the
13 rules.

14 And our crack field staff, Manny and Frank
15 back there, have done very thorough investigation,
16 and they tell us that San Pasqual has the best
17 buffet at all the --

18 MR. COPE: And you're more than welcome.

19 Thanks, but that's unsolicited.

20 MR. HERNANDEZ: Many hours in the field.

21 MR. COPE: That's an unsolicited testimony.

22 CHAIRMAN HOGEN: We're eager to try and

23 confirm their evaluation.

24 MR. COPE: Will you wait until we open our

25 steakhouse and our -- well, the cafe will be

1 excellent, too, but our steak house will be probably
2 one of the best. We have some really great -- our
3 management there has got years and years of
4 experience.

5 Mike was brought up in Caesar's World, and
6 Randy has been to a number of different casinos as,
7 you know, learning the trade of the slot machines.
8 And our chef and our general manager have both been
9 involved for years in gaming. And actually, our
10 chef now came from Bellaggio. And I don't know
11 where else he was at, but it is a good buffet. In
12 fact, we just won an award for best buffet --

13 MR. GORCZYNSKI: In Southern California.

14 MR. COPE: -- in Southern California. So
15 you do need to come and try it.

16 And I apologize for Joe. We're having a
17 little bit of problem with some water lines in the
18 facility, so we're trying to get them -- make sure
19 we don't run out of water. That would be a bad deal
20 for us.

21 CHAIRMAN HOGEN: It would be a bad deal

22 anytime, but particularly when it's --

23 MR. COPE: With the heat that's out here

24 now. It's amazing.

25 So, did you get a chance, Randy, to look at

1 the changes?

2 MR. REEDY: Not the changes at all.

3 MR. COPE: I guess they're not changes,
4 because you said there was nothing written before.

5 CHAIRMAN HOGEN: Well, let me just
6 generally describe kind of the history here.

7 The Indian Gaming Regulatory Act says
8 tribes can use technologic aids to play bingo in
9 Class II games. But they also said that if you're
10 using an electronic facsimile of a game of chance,
11 that is a Class III game. And so it's never been
12 crystal clear where the dividing line is.

13 And there were a number of lawsuits brought
14 by the Department of Justice that enforces the
15 Johnson Act, that says you can't have gambling
16 devices in Indian country when tribes were using
17 equipment to play Class II. The Justice
18 Department's theory being well, look at the line of
19 cases under the old Johnson Act as it developed,
20 even outside Indian country. And these gadgets are

21 gambling devices.

22 And the courts looked closely at the

23 machines that were focused on in these cases, and

24 they said well, this MegaMania bingo game that was

25 one of the machines is an aid that aids the player,

1 but the actual play of bingo is done by the players.
2 It's outside the machine. And without the players'
3 participation, you can't play the game, so it's not
4 an electronic facsimile.

5 And similarly, they looked at some pull tab
6 machines that, in addition to dispensing the pull
7 tab, had a video screen that showed slot machine
8 reels. All those reels told the player was whether
9 they won or lost.

10 And the Justice Department said that's a
11 gambling device under the Johnson Act. And the
12 court said no, the game is in the paper. That slot
13 machine screen just tells them whether they won or
14 lost. It's entertainment. So as long as the game
15 is in the paper, this is not a prohibited device.

16 Then the two concepts got married. They
17 put bingo on the machine and they also added the
18 slot machine reels to tell you whether you won or
19 lost. And these machines the courts looked at would
20 take about a minute to play the game, and you

21 couldn't play till you had 12 people playing and
22 there had to be 48 bingo cards there. And the games
23 the companies brought to us were just one-touch,
24 instantaneous, it's over, you know, right after you
25 push the button games. And we were concerned that's

1 gone too far. That's crossed the electronic
2 facsimile of a game of chance line. So rather than
3 go stumble along lawsuit to lawsuit, we said let's
4 write some rules. And that's what we're trying to
5 do.

6 (Mr. Navarro entered the room.)

7 CHAIRMAN HOGEN: Welcome.

8 MR. NAVARRO: Sorry, folks. I was on a
9 conference call about water.

10 CHAIRMAN HOGEN: We understand that's
11 important.

12 Would you introduce yourself and tell us
13 how you're involved here for the court reporter.

14 MR. NAVARRO: Absolutely. Joe Navarro is
15 my name. I'm a band member, San Pasqual Band of
16 Mission Indians and the current President and Chief
17 Executive Officer of the San Pasqual Casino
18 Development Group, which is a tribally chartered
19 corporation, and tasked with overseeing the
20 development, financing, construction, management,

21 operation of the tribe's gaming enterprise, Valley

22 View Casino, on its behalf.

23 CHAIRMAN HOGEN: Okay. We've been learning

24 a little about your operation. We understand you

25 don't currently have Class II.

1 MR. NAVARRO: Correct.

2 CHAIRMAN HOGEN: Nor do you have the full
3 component of 2,000 Class III machines, but you're
4 trying to move in that direction and you may, either
5 to supplement that or while you're waiting for the
6 other Class III machines, put some Class II machines
7 in play.

8 And of course, that's what we're here to
9 talk about, is these proposed regulations that will
10 try and clarify just what's the difference between
11 compacted Class III equipment and the equipment you
12 can use to play bingo and such games.

13 MR. NAVARRO: Right. And Class IIs, while
14 you're right, we don't have Class IIs now. And
15 we've discussed with our vice president of slot
16 operations, Randy, as I'm sure he's introduced
17 himself, Class II, because you're correct, we don't
18 have our full contingent of 2,000 licenses, we're
19 currently at 1572 of our III licenses, Class IIs is
20 something that we want to explore more. And while

21 we're considering 100 to 130 of those units, that
22 may be something that we expand to a larger number
23 as we go forward, based on the technology and the
24 response from our guests as to how valuable those
25 really are.

1 CHAIRMAN HOGEN: Okay. You have thoughts
2 or comments you'd like to share with us about what
3 we've proposed?

4 MR. NAVARRO: You know, without rehashing,
5 and maybe -- I understand that -- I guess I don't
6 have a full understanding of what the proposal is
7 relative to Class II and how it is changed from
8 existing regulations. I was having trouble
9 digesting that. So -- and I don't know if you've
10 already had that conversation.

11 CHAIRMAN HOGEN: We've discussed some of
12 that. And one of the things I tried to clarify was
13 we are not changing regulations for the most part,
14 we're writing them to begin with. That is, there
15 haven't been regulations. There has been a
16 definition of this electronic facsimile, and we are
17 adjusting that. But there really hasn't been that
18 rule book that I think is needed.

19 If you're going to invest in 150 machines,
20 you want to know somebody isn't going to come along

21 tomorrow and say, "Sorry, those are illegal."

22 MR. NAVARRO: Right. Absolutely.

23 CHAIRMAN HOGEN: And so unless or until we

24 get some clarity here, there will be that risk. And

25 I'm sure, if and when we finalize these regulations,

1 somebody sometime is going to sue us and say you

2 went too far, they weren't liberal enough.

3 And that's not a bad thing. That would

4 bring clarity to it. You know, if they tell us

5 we're wrong, we'll be glad to get it right. If we

6 get it right, then we'll take comfort in going

7 forward. But we've been kind of spinning our wheels

8 for a couple of years trying to get there, working

9 with the Justice Department that's concerned about

10 the Johnson Act and its prohibitions. And they've

11 suggested that ought to be amended, and we support

12 that. So that's where we are.

13 In terms of what you guys might do or when

14 you do it, my advice to you would be, be sure you

15 don't jump in and get a machine that looks and feels

16 so much like a Class III machine that if and when we

17 come along with some regulations and say no, that's

18 crossed the line, that your players are going to be

19 so disappointed when you have to, you know, move a

20 step back.

21 And I think that's happened in a number of
22 jurisdictions. They've crossed that line. They
23 call it Class II. They don't have the compact to
24 play Class III. And if we come up with some rules,
25 it's going to be a real paradigm shift for those

1 players to say wait a minute. Now we've got to get
2 involved here. We've got to participate rather than
3 just push the button and let the machine do it all.

4 So, you know, we're going to try to have a
5 transparent process here so you know where we're
6 going and when we're going. Hopefully, this fall we
7 can come to an end of the drafting and get these
8 proposed.

9 MR. REEDY: I think we're at the mercy of
10 the NIGC as well as the manufacturers right now, as
11 an operator. We order the game through -- whether
12 it be IGT or Rocket Gaming or whoever offers a
13 Class II product, and I think they're doing what
14 they can to make it look like a Class III game. And
15 without the regulations right now, they bend the
16 rules as far as they can.

17 So unfortunately for the operator, we're at
18 the mercy of you guys and the operator -- and the
19 manufacturer itself.

20 MR. CHONEY: Therein lies the problem. You

21 know, that's all over, predominantly in the states
22 that are mainly Class II. They have vendors coming
23 in and selling them or leasing the tribes Class II
24 machines under the guise of Class II, but in
25 reality, they're Class III.

1 MR. COPE: So like in Florida, with the
2 Seminoles?

3 MR. CHONEY: In Florida and the state of
4 Oklahoma and here in California also.

5 MR. NAVARRO: And as I understand it -- and
6 you know, to simplify things, from what I
7 understand, the Seminoles operate what would be
8 considered a cutting-edge Class II product. Is that
9 an accurate statement?

10 CHAIRMAN HOGEN: The company that developed
11 most of the machines on their floor -- and I can't
12 tell you exactly what's out there precisely -- but
13 came to NIGC and said, "We've got a machine we'd
14 like you to consider and write us a letter saying
15 this is Class II."

16 And so we looked at their proposal, we had
17 some problems, they made some adjustments, and
18 eventually we issued an advisory opinion, saying,
19 "If you build and play the game this way, we believe
20 it's Class II."

21 However, writing these regulations and if
22 we get done with those, there might have to be some
23 further changes. So they built that machine.
24 MR. NAVARRO: They build the machine.
25 Their Class II operation is consistent with NIGC

1 recommendations as a result of a request for
2 assistance on the development of their machine?

3 CHAIRMAN HOGEN: Well, that's the way it
4 started.

5 MR. NAVARRO: Okay.

6 CHAIRMAN HOGEN: But the -- one of the
7 theories that emerged as we tried to study the
8 Indian Gaming Regulatory Act, the legislative
9 history, the cases that interpret these things, was
10 that there has to be player participation. That is,
11 an electronic facsimile of a game of chance, the
12 machine basically does it all. But these bingo
13 games, there has to be players participating.

14 The rules of bingo are set forth in the
15 Indian Gaming Regulatory Act. You have a card, it
16 has numbers, numbers are called, you cover those
17 numbers when they are called. And if you get the
18 pattern, you win.

19 And we agree that you can use equipment to
20 aid you to do that; we just don't agree that the

21 equipment can do it all. So we've said there have
22 to be intervals in this play of the game for the
23 players to participate. So very simply, we say
24 okay, you can call some numbers. And the computer
25 has the luxury of knowing what the numbers are on

1 everybody's card. You've got to stop calling those
2 numbers before you have a winner. And then players
3 better daub your card. Okay, then call some more
4 numbers. And probably you'll call enough numbers to
5 give somebody a bingo. And you daub your card
6 again, and with that second daub, you can also claim
7 your win. That's not too complicated or too slow,
8 but we've built those in.

9 In some of those machines, I believe in
10 play in Florida and elsewhere, they've said, "Well,
11 we're going to have an autodaub feature here, and it
12 will do it all after you push the button."

13 MR. NAVARRO: Okay. So the player is not
14 daubing or selecting the numbers; the computer is
15 making the selection, and therein lies the gray
16 area?

17 CHAIRMAN HOGEN: Yeah. And I suppose, if
18 we were equipped to do everything that maybe is
19 called for, we'd go out and do something about that.
20 But we've said, you know, we'll be better served and

21 so will the tribe. If we have a set of regulations
22 to base this on, then we won't have to have just one
23 more of these court cases and argue further about
24 it.

25 MR. NAVARRO: Okay. And the whole issue

1 comes down to time for the player, speed for the
2 player, and that's really -- I mean, if we cut
3 through all the -- the fodder, the issue is how fast
4 can the player spin the reel or move the machine to
5 the next level? And the primary distinction is that
6 the NIGC's position is that there should be a time
7 delay to allow the player to make the selection,
8 which slows the game down as opposed to the computer
9 making the selection on the player's behalf, which
10 speeds the game up?

11 CHAIRMAN HOGEN: Yeah. I think that's a
12 good summary. And some would call it -- say the
13 significance is time. I would say the significance
14 is participation. But it may be --

15 MR. NAVARRO: It's probably both. I think
16 it's both. Yeah. Okay.

17 And right now the Class IIs in operation
18 are using this autodaub feature?

19 CHAIRMAN HOGEN: Many of them are, and that
20 concerns us. Yeah.

21 MR. COPE: Okay. So if you're going to
22 write these rules, regula- -- whatever we're going
23 to call these things, and a tribe like us is in the
24 position of gaining a Class III maximum we can have
25 at this point in time and fulfill the rest with

1 Class II, how long does this process take? I mean,
2 you just mentioned a while ago it's been two years
3 that we've been looking at this, and you're saying
4 be careful what you buy. Well, you know, we don't
5 have the luxury of time, I guess.

6 CHAIRMAN HOGEN: You have a very legitimate
7 concern. The minute Chuck and I walked in the door
8 at the National Indian Gaming Commission in 2002, we
9 recognized this is a problem. The previous
10 commission had promulgated some regulations, and
11 then they pulled them back. And so, you know, it's
12 been a challenge for years.

13 So shortly after we got on board, we wrote
14 to tribes and said we want to form a Tribal Advisory
15 Committee with the best minds that are out there to
16 help us write some regulations. We got a lot of
17 great nominations. We selected a really good team,
18 an advisory committee, and they helped us draft
19 these things.

20 We went through five different drafts.

21 Each time we published it on our website so all the
22 tribes could look at it, we got suggestions. And
23 last spring we were about to head off to the Federal
24 Register to start a process like this, when the
25 Justice Department that struggles in enforcing the

1 Johnson Act said, "Wait a minute. This may violate
2 the Johnson Act."

3 So we spent all last summer arguing with
4 the Justice Department, and last fall they came out
5 with a proposal, "Let's amend the Johnson Act.
6 Let's carve out that prohibition for technologic
7 aids for Class II if those games comply with the
8 regulations that the NIGC comes out with."

9 And we said, "Good idea." And we waited
10 for them to send their proposal to amend the Johnson
11 Act to Congress. And we waited.

12 And finally we said, "We just can't wait
13 any longer. We're going to propose our regulations.
14 Good luck with your proposal to amend the Johnson
15 Act."

16 They have since sent to Congress a proposal
17 to do this that would require us to write
18 regulations, and so those things still mesh. They
19 still interrelate.

20 MR. NAVARRO: Do they? That's an important

21 question, because as I've been following this, at
22 one point, I think the DOJ's position is, "We're
23 going to lead this charge." They then backed off,
24 and their position is, "We would like you to lead
25 the charge, and we will make modifications

1 concurrent with that effort."

2 But now you're saying that the DOJ is
3 taking a more aggressive position and is prepared to
4 go to Congress with changes or amendments to the
5 Johnson Act that may or may not conform with what
6 NIGC is proposing? Is that kind of where we are?

7 CHAIRMAN HOGEN: Well, as we read their
8 current draft, it would conform.

9 MR. NAVARRO: It would not?

10 CHAIRMAN HOGEN: It would. It would direct
11 us to write regulations.

12 Now, obviously, in the course of our
13 discussions all summer last year and since then,
14 they've learned a lot and they have tempered their
15 position. We've also been influenced by some of the
16 things that they said. They said, among other
17 things, we think it's very important that there be a
18 disclaimer there that you're playing a bingo game so
19 people know they're not playing a slot machine or an
20 electronic -- and so we modified our proposal to

21 that extent.

22 And now we're hearing tribal comments, some
23 of which are critical of those changes that we made
24 based on some Justice Department suggestions. And
25 I'm sure we're going to hear more from the Justice

1 Department before we get to the end of the trail.

2 MR. NAVARRO: I see. Which -- I don't know
3 what Randy thinks because he and I haven't had the
4 opportunity to talk about it, but I think there's --
5 a differentiation between a II and a III is a good
6 thing. I think there should be some distinction
7 between those two, and it's -- the technology of,
8 you know, self-daubing as opposed to auto-daubing, I
9 think we would probably support that. It's -- a II
10 is obviously not as fast or as desirable as a III,
11 but it's something to fall back on.

12 MR. REEDY: Mm-hmm.

13 MR. NAVARRO: You know, without -- I mean,
14 a fallback position, really, is what IIs are.

15 MR. COPE: Well, it's a backup, is what it
16 ends up being.

17 MR. GORCZYNSKI: Yeah. They're not as
18 popular as a Class III game. It's not as exciting
19 as a Class III game. The self-daubing would
20 certainly slow it down, and as an operator, we

21 probably would not be in favor of a slower game. We
22 would like a game that kind of plays and feels like
23 a Class III.
24 So I guess to limit the amount of time and
25 self-daubing would be something that we would like

1 to see as opposed to an autodaub. If an autodaub is
2 out of the question and can't be utilized, then some
3 type of self-daubing process that happens very
4 quickly.

5 CHAIRMAN HOGEN: Well, we accommodate
6 autodaubing. That is, you don't have to go on the
7 screen and find 3 under B. They call a number and
8 you push a button and say, "Machine, if I've got
9 those numbers, cover them for me. Daub them." And
10 that happens in a heartbeat. And then they call the
11 next numbers and you do that again.

12 The underlying concern here is if we get to
13 that point where you can't tell, for all intents and
14 purposes when you walk in and sit down in front of
15 that machine, whether you're playing compacted
16 Class III or uncompact Class II, I think states
17 are going to come unglued and say, "Hey, that's not
18 what the Indian Gaming Regulatory Act says. If
19 you're doing slot machines, you've got to come and
20 do a compact."

21 And they, then, might go to Congress and
22 say, "Get this changed," and they might change it,
23 and it might be worse for tribal gaming.
24 Or they might say, "Why in the world are we
25 just letting them do this down on the reservation?"

1 Let's let everybody do it." And then who's going to
2 go to the reservation when you can do it in downtown
3 Los Angeles or whatever? And I don't want to kill
4 the goose that laid the golden egg.

5 MR. NAVARRO: I think that's a perfect
6 position for NIGC to represent all tribal
7 governments from coast to coast. I mean, I
8 understand the concept, and I would agree with it
9 100 percent. That's the protection. I mean, we
10 entered into an agreement, and let's stick with the
11 agreement. That's our position.

12 You know, the faster the Class II, the
13 better for us. But I agree, I think there has to be
14 some distinction between the two that the states can
15 point to and say, "All right. We entered into this
16 agreement as well. That's a II; that's a III.
17 We're all in agreement with that."

18 And you're not saying that the NIGC is
19 opposed to the autodaub feature of the existing IIs.
20 Is that the NIGC's formal position?

21 CHAIRMAN HOGEN: No. Well, probably we
22 could argue with what's autodaub. We're opposed to
23 auto-everything. We say yes, you can autodaub. You
24 can push the button and cover the numbers, but you
25 can't just push the button once and it daubs --

1 MR. NAVARRO: And it does everything in
2 that roll?

3 CHAIRMAN HOGEN: Yeah. Part of the, you
4 know, concept of bingo, this race to see who can
5 cover the numbers, is you can sleep your bingo. If
6 I'm sitting here visiting with Chuck and they call
7 my number and I don't daub, I don't deserve to win,
8 you know. And if the gal next to me is playing and
9 paying attention, she'll get the bingo, and that's
10 the way it works.

11 And you lose that element if you just push
12 the machine and, you know, it's all over.

13 MR. NAVARRO: And that's where the line is
14 blurred between IIs and IIIs?

15 CHAIRMAN HOGEN: Yeah.

16 MR. NAVARRO: And I understand that. And
17 again, as the representative of the tribe, I support
18 the NIGC's position to distinguish between IIs and
19 IIIs. I think it makes absolute sense, and it
20 bolsters our position with the states in terms of

21 compact language. I guess it just comes down to
22 what is the II that we'll have at the end of the
23 day. And like Mike says, the faster the better, but
24 there has to be some distinction.
25 And if I'm not mistaken, wasn't the --

1 wasn't the slot operator at Seminole on the
2 advisory committee?

3 CHAIRMAN HOGAN: Joe -- strike that.

4 Charlie Lombardo is -- yeah. And Charlie has a rich
5 and colorful Las Vegas background and --

6 MR. NAVARRO: Don't they all?

7 CHAIRMAN HOGAN: Right.

8 MR. NAVARRO: Just kidding.

9 CHAIRMAN HOGAN: And he was extremely
10 insightful and helpful and brought us, you know, the
11 operator's, manager's point of view.

12 MR. NAVARRO: Terrific.

13 CHAIRMAN HOGAN: Any other questions or
14 comments about this process?

15 MR. REEDY: I think Al asked earlier and we
16 really didn't get an answer, I don't think. When do
17 you think we'll have a regulation down to the
18 manufacturers that say okay, this is the guideline
19 that you have to follow, so that when we pursue
20 Class II operation games, we can say I don't want

21 the NIGC to come back in six months and say, Randy,
22 sorry, but you're going to have to take these games
23 off the floor?
24 MR. NAVARRO: Right. We never want to go
25 backwards with our guests.

1 MR. COPE: If there's machines that we know
2 do meet that -- fulfill that requirement today, then
3 we'd be better off taking those in, working with
4 those until bigger and better ones are approved and
5 changing them out that way than going from the top
6 to the bottom.

7 MR. NAVARRO: Yeah. I agree.

8 MR. COPE: And I know that's maybe a tough
9 question to ask, but I guess that's what you're
10 asking, is that if we do need to fill in, what can
11 we safely fill in with so our guests don't see the
12 downfall?

13 CHAIRMAN HOGEN: Chuck and I have very much
14 dedicated to getting this thing done and out the
15 door this fall. And, of course, then there will be
16 a period of time that tribes will have to come into
17 compliance.

18 And part of the process envisions taking
19 NIGC out of the loop. That is, we won't be the
20 certifier. Rather, independent gaming laboratories,

21 GLI, BMM, Nick Farley, folks like that, hopefully,
22 will come to us. We will certify them, and then
23 manufacturers will take their machines to them and
24 say, "Certify that this complies with the
25 regulations."

1 And if they say okay, they're good to go,
2 now, he would send us that opinion too, so we could
3 look at it and say, "Did they do the right thing?"
4 I expect in most cases that's going to be true, and
5 we'll be off and running. So, you know, once all of
6 that process is done, there shouldn't be any doubt
7 about it.

8 Now, we've issued that's advisory opinions,
9 but we've qualified them by saying if there's some,
10 you know, changes in the regulations, these will
11 have to be changed to meet that. So you'd have to
12 look carefully at, you know, where we are on the
13 drawing board if you were going to make an
14 investment before the regs got finalized.

15 MR. NAVARRO: And without making an
16 endorsement of any one particular manufacturer, is
17 there any manufacturer that the NIGC feels more
18 comfortable with relative to their Class II product
19 than any other? I mean, is there -- is there
20 somebody out there that is -- that the NIGC is

21 comfortable in maybe benchmarking relative to

22 writing the regulations of -- for a product that's

23 already out there?

24 MR. CHONEY: We're precluded by Federal

25 statute from giving anyone an endorsement.

1 MR. NAVARRO: I see.

2 MR. CHONEY: Because this is a matter of
3 public record, and if we give somebody an
4 endorsement, it will come back on us. We try not to
5 show favoritism to anyone. So we deal with all of
6 them.

7 CHAIRMAN HOGEN: But you will find on our
8 website this published list of advisory opinions.
9 But before you look at an advisory opinion,
10 particularly an older one, and say we're good to go,
11 look at what we've proposed. And if there's some
12 differences there, be cautioned that there might
13 have to be more changes.

14 MR. NAVARRO: So what you're proposing now
15 is available on the website for -- or what you've
16 drafted to date is available on the website?

17 CHAIRMAN HOGEN: Yes, it is.

18 MR. NAVARRO: Okay. I figured that was
19 your position, but I thought I'd throw the question
20 out there to see.

21 MR. GORCZYNSKI: Well, let me ask a
22 question, then. If the NIGC would desire or expect
23 a gaming manufacturer to come to them for their
24 approval, yes, this is a Class II game according to
25 our regulation, at that time would that be public

1 knowledge?

2 CHAIRMAN HOGEN: Yes. Once -- once this is
3 finalized, then we'll certify the labs, the labs
4 will certify the machines. And I'm sure they will
5 preach it to the rooftops, you know, that
6 manufacturer, "We've got a certified game. Come and
7 buy it."

8 MR. COPE: It will be in the magazine's
9 next edition.

10 MR. GORCZYNSKI: Right. Okay. Coming soon
11 this fall, hopefully.

12 CHAIRMAN HOGEN: Right. Okay. We want to
13 thank you for visiting with us and wish you well as
14 you consider these challenges.

15 MR. NAVARRO: Thank you for the time.

16 (End of San Pasqual Band of Mission

17 Indians discussions.)

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1 KARUK TRIBE OF CALIFORNIA

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3 CHAIRMAN HOGEN: We will commence here and
4 go on the record.

5 Good morning. Welcome. I'm Phil Hogen,
6 Chairman of the NIGC. Commissioner Chuck Choney,
7 who is the other member of the Commission, is here
8 with me.

9 We're here in Ontario, California, on
10 July 27, 2006, pursuant to National Indian Gaming
11 Commission's publication in the Federal Register of
12 some proposed regulations we put in the Federal
13 Register on the 25th of May 2006, relating to
14 definitions and proposed classification regulations
15 that will be relied on to distinguish the
16 technologic aids the tribes can use to do Class II,
17 or uncompact gaming, as opposed to those
18 electronic facsimile games of chance that would
19 pertain to Class III gaming that the tribes would
20 have to have compacts for.

21 With us here today, our Chief of Staff Joe
22 Valandra is seated next to Chuck. From the Office
23 of General Counsel, Michael Gross and Attorney John
24 Hay are here from Washington. Eric Schalansky, as
25 you know, is our Regional Director from Sacramento,

1 and Alan Phillips is in the Sacramento office. And
2 next to the court reporter here is Penny Coleman,
3 our Acting General Counsel.

4 So if you would please introduce yourselves
5 so that the court reporter will know who's doing the
6 talking, I'd appreciate it if you would do that.
7 And then we'd very much like to hear your comments
8 or questions you may have about the proposals we've
9 made.

10 MR. SUPER: (Speaking in his Tribal
11 language.)

12 THE REPORTER: I can't understand that.
13 You have to speak English.

14 MR. SUPER: I will interpret it, but as a
15 tribe, I introduce myself to the public.

16 THE REPORTER: Okay. I can't write that.

17 MR. SUPER: That's all right. I'll start
18 over again.

19 (Speaking in his Tribal language.)

20 In English, that means my name is Arch

21 Super. I'm the Karuk Tribal Chairman.

22 MR. GARCIA: (Speaking in his Tribal

23 language.)

24 My name is Hector Garcia, and I send

25 greetings from the Karuk Tribe. I'm the

1 Self-Governance Director, and I really wish to thank
2 you for allowing us to be here today.

3 CHAIRMAN HOGEN: And the other members here
4 in your delegation, would you introduce those?

5 MR. GARCIA: As observers, we have Natalie
6 and Pete Munoz. And we have Efrain Cruz in
7 attendance also.

8 CHAIRMAN HOGEN: Thank you. We'd love to
9 hear your comments about these proposals.

10 MR. GARCIA: Okay. Well, first of all, I
11 would like to thank the NIGC and its members that
12 are here today for this opportunity to appear before
13 you to discuss an issue of great importance to this
14 committee and to Indian tribes throughout the United
15 States, which is the regulation of Indian gaming.

16 The regulation of Class II machines is a
17 matter of great significance to the Karuk Tribe, as
18 the tribe is currently taking steps to secure
19 permission to construct a casino in Yreka,
20 California.

21 The Karuk Tribe of California has occupied
22 approximately 1,639 square miles in the northwest
23 portion of what today is California until gold
24 seekers displaced the tribe, taking the land. The
25 tribe signed what they believed would give them

1 protection, but the treaty was never ratified by the
2 United States Senate, and this fact was kept secret
3 from the tribe until well into the following
4 century.

5 Not only was the tribe left without a
6 treaty, but it was left without land. Today the
7 tribal people who reside along the Klamath River do
8 not live on a reservation. The tribe is essentially
9 a landless tribe. What little land is owned by the
10 Karuk Tribe was purchased by the tribe after it was
11 Federally recognized in January 1979.

12 With the reinstatement of Federal
13 recognition, the tribe found itself in dire strait,
14 situated in the middle of land which was owned by
15 the United States Forest Service, so there was no
16 land to be purchased for economic development.

17 The need for economic development is
18 apparent to all who come along the Klamath River.
19 For example, in 2004, the median income in a
20 four-person Indian family living along the Klamath

21 River was only \$13,000 per year. This, while the
22 median income in California in 2004 was \$67,000.
23 Currently, 62 percent of tribal members live below
24 the poverty rate; 25 percent are unemployed. Today
25 the tribe has approximately 3,400 members. It's the

1 second largest tribe in California.

2 The tribe operates three medical clinics.

3 A comprehensive social service network has been
4 developed for tribal members. The tribe has a
5 tribal court, three tribal housing areas, a computer
6 training center, a museum, a Headstart program. It
7 takes care of its children through various programs
8 that have been put together by the tribe in a very
9 short period of time.

10 In order to continue the process of growth
11 and development for self-governance in the tribe,
12 within the next several weeks we will resubmit an
13 application to the NIGC for a lands determination.

14 Today the Karuk Tribe would like to be able
15 to have a casino that is economically viable with
16 Class II machines. What happens to those machines
17 and, thus, the future of the tribe, lies in your
18 hands. And that is why Arch and myself are here
19 today.

20 We have gone over these, and this is -- I

21 understand all of the steps that the National Indian
22 Gaming Commission has gone through to develop these
23 proposed rules. I understand the amount of time and
24 effort and consultations that have taken place. But
25 I would really like to stress to the Commission that

1 maybe even at this slow rate of movement, that maybe
2 you're moving too fast.

3 The Karuk Tribe does not believe that under
4 the current political climate that these rules are
5 in the best interest -- the proposed rules are in
6 the best interest of the tribe. For us,
7 well-defined rules that allow us to plan into the
8 future are very important. We want to have
9 well-defined rules. We're going to be able to make
10 projections in terms of will the casino be
11 profitable, for example. We will know, if we
12 purchase machines, that we can use them and not be
13 in violation of any rules with respect to the
14 National Indian Gaming Commission or the Department
15 of Justice.

16 But there's something that, to us, is very
17 troubling. And we have not spent the time and
18 effort that you have, and we don't have the
19 experience that you do, but our feeling at this
20 point is that the changes to the definition of the

21 term "electronic" or "electromechanical facsimile"

22 should not be done at this point.

23 And I think one of the biggest problems

24 that we have is that looking at what has developed

25 with the Department of Justice seems, to us, to be

1 the most important impediment to going forward. It
2 doesn't seem to us that until everything is resolved
3 with the Johnson Act and amendments that need to be
4 made, that it would be wise to proceed with these
5 rules. What we're going to have, I think, is you're
6 going to try to have some standards coming out of
7 the NIGC, but you don't understand or you don't know
8 where we're going to be with the Department of
9 Justice.

10 So it just seems to be unwise for us that
11 if we are given permission to proceed with the
12 purchase of a Class II machine that we don't have
13 the standards any longer, because while we may
14 understand what you are saying, where do we stand
15 with the Department of Justice?

16 Now, if we were talking about an investment
17 of 10 or \$15,000, well then, we could say we'll risk
18 it. But when you're talking about an investment of
19 millions and millions of dollars and we don't know
20 what's going to happen with the Department of

21 Justice and the amendments, what are you doing to
22 us? You're asking, in here, that, "Come on, tribes,
23 let's work together and let's have ascertainable
24 standards. It's the only way that we can go so we
25 all know what is legal and not legal. It's good for

1 the industry, it's good for the NIGC, it's good for
2 the public."

3 But when you turn around and you look at
4 our side and you look at we don't know what the
5 Department of Justice is going to require, there
6 isn't anything that's fairly ascertainable on our
7 end.

8 Now, I'll tell you why this is so
9 important. The political climate in California is
10 such that it doesn't appear that in the foreseeable
11 future that the governor is going to be able to pass
12 compacts through the legislature. It just -- look
13 at the Yuroks. They've been waiting way longer than
14 a year, and it's probably been a year and a half
15 now. So a tribe like our tribe is going to depend
16 on Class II. And if you don't have this settled,
17 then we're going to suffer.

18 So it would be better to leave it where it
19 is now, because inevitably what's going to happen is
20 there's going to be litigation. There's no doubt

21 about it. If we like it or not, we know that there
22 is a long list of Federal cases that has struck down
23 what the National Indian Gaming Commission has tried
24 to do in the past. There's no doubt about that.

25 Now, with what's going on with the

1 Department of Justice, you've got the court cases on
2 the other side. There's going to be a challenge to
3 the Administrative Procedure Act. We don't know
4 where that's going to go and neither do you, because
5 as we all know, it really depends on who is the
6 judge that takes the case? And there's more
7 ambiguity.

8 Taking this thing with a little bit more
9 conservative view and waiting for the dust to settle
10 is really the best way to go. I think that maybe
11 the Commission has been so concerned with these
12 proposed changes that it has forgotten, really, the
13 reason that the National Indian Gaming Commission is
14 here.

15 It has to be remembered that the purpose of
16 the Indian Gaming Regulatory Act is to provide a
17 statutory basis for the operation of gaming by
18 Indian tribes as a means of promoting tribal
19 economic development, self-sufficiency, and strong
20 tribal governments. You know, you're supposed to

21 provide an adequate shield from organized crime and
22 other corrupting influences.

23 This must remain the guidepost that the
24 NIGC uses. And I think that at the end of the day,
25 when all of you are sitting there and you're

1 reflecting on this, I think it would be far more
2 valuable to say look, we've got the second largest
3 tribe in California. It needs to continue to
4 provide for its membership. It's in the middle of a
5 forest. It can't buy land to put a factory, it
6 can't buy land to put in a sawmill, it can't really
7 do anything along the river where the members are
8 concentrated.

9 What is it with IGRA that we can do to
10 support and carry out the mandates of Congress?
11 It's not to add more ambiguity. I mean, it's how
12 are we going to help the second largest tribe in
13 California? That really is the question here.

14 So I would just like, at the end of the
15 day, when you're sitting back and reflecting on it,
16 should we try to push this right now? Wouldn't it
17 be wiser to wait another year? That's my concern.

18 There's no predictability or stability
19 coming out of these rules. A real concern of ours
20 is, as we've looked through this, is what is going

21 to be the effect to the Karuk Tribe at the end of
22 the day if the machines are running slower, if the
23 machines are producing less revenue? Has the
24 situation been created where the machines do not
25 produce enough money so that a casino can stay open?

1 Now what have you done to the tribes? Have
2 you turned IGRA on its head? Have you now made it a
3 situation where Class II no longer exists, and that
4 the only thing that's left is Class III? And when
5 you have a legislature that does not want to allow
6 Class III in the state, what happens to tribes like
7 us that have real immediate needs?

8 There are people that are coming to us all
9 the time that need medical care, they need dental
10 care, they need housing. I mean, our housing
11 situation is incredibly difficult along the river,
12 where you can't buy land. And we can work with the
13 small amount of land that's available there, but we
14 need money. But if we are locked out in Sacramento
15 and there -- essentially, because of the way these
16 rules are being done and the litigation and how it
17 seems that Class II is being filtered out of the
18 process, where does that leave the tribe? There are
19 no other options. If we can't get into Class II,
20 we're out.

21 So this is a real serious situation to us.
22 I mean, this is not something -- well, what we'll do
23 now is, we have permission to construct a casino.
24 It's not economically viable to put in Class II
25 machines, so let's go back to the governor. We

1 don't have the time to wait. The Federal budget,
2 the cutbacks in Indian country do not permit us to
3 wait.

4 People are -- you know, we get the snow.
5 People can't get out of their driveways. We don't
6 have the machinery to go out there and get people
7 out of their houses. People don't have heat. There
8 isn't enough food. People get sick. It's a long
9 river. And this is the only thing that this tribe
10 has. And we have spent, since Governor Davis was
11 the governor, trying to get this for the people. We
12 went through the next governor, and then we're now
13 here with Schwarzenegger.

14 And the people ask every time that he's in
15 one area or I'm in another, they go, "When is the
16 casino coming? When is the casino coming?" You
17 know, there is nothing worse than having a job in
18 Happy Camp. And I'll tell you why. You get up and
19 you go to work, and you see tribal members looking
20 for work and there's no place to go for work.

21 You're in the middle of a forest with no place to
22 go. You almost feel guilty getting your check at
23 the end of the month, you know.
24 It's not fair that you're playing with the
25 rules like this. This is a very serious thing to

1 people like us. We have to face our tribal members.
2 We look them in the face and say, "We're going to be
3 there for you." And we're spending money trying to
4 get a casino and that money should go for children
5 who are having problems, and we don't have money for
6 Headstart. You know, we don't have money for foster
7 care. We're taking care of the children throughout
8 two counties, Siskiyou County and Humboldt County,
9 and the Federal money that's coming through is
10 dropping. How do you take care of the children?
11 The county is refusing to take care of them. We
12 have to do it.
13 You know, the elders. They don't --
14 there's no -- there's no place for them to get
15 medicine. You know, if you live in Orleans, you're
16 talking about three hours to get into Yreka to go
17 there and get a prescription drug. You know, when
18 we have the money, we get a carrier that goes back
19 and forth and picks up medicine for people or takes
20 them to the doctors. But when you don't have the

21 money, you can't provide transportation. You can't
22 cook meals and give them to the elders, you know.
23 There are too many people living along the
24 river sitting in old mobile homes. And when you
25 don't have air-conditioning and it's 110 outside,

1 that's a cruel joke to do to people. And when we're
2 spending the little bit of our money that we've got
3 for a casino and the rules are going to be changed,
4 it reminds me of what originally happened when the
5 settlers arrived in Orleans. Peace was bought with
6 a treaty that was never ratified by the Senate, so
7 all the land was taken.

8 People lived on the side of the hills. All
9 the flat land was taken by others. And there was no
10 treaty. The rule was changed. "Sign this and there
11 will be peace." The rule was changed. It hasn't
12 been ratified. And now here we are again, over 150
13 years later, and we have spent years and years and
14 years trying to get a casino, and we get a notice
15 through the Federal Register that says the rules are
16 going to be changed again.

17 And before you do that, I ask you to really
18 look at how it's going to affect the second largest
19 tribe in California, you know. We get up and we
20 talk about this every day. What are we going to do?

21 We were talking about it today. What kind of an
22 operation can we put in Happy Camp that could employ
23 at least four people?
24 And there isn't that much you can do. It's
25 too far from anyplace. Transportation costs,

1 because of fuel, it's too high. We were talking
2 about getting a rock-crushing operation going
3 because there's so many rocks around. But how do
4 you get the rock, the gravel, back into a big city
5 so people can buy it from you? Nobody's going to
6 drive into Happy Camp to buy gravel.

7 For us there's only one avenue, and that is
8 this casino. And I ask you to please think very
9 carefully before you change the rules on us.

10 Thank you very much.

11 CHAIRMAN HOGEN: Thank you.

12 We will think very carefully, with Karuk
13 and other similarly situated tribes in mind.

14 Your economic plight is not unlike that of
15 my tribe, the Oglala Sioux of the Pine Ridge
16 Reservation in South Dakota, where we have property.
17 We don't have the market for the gaming to be
18 offered, and it's extremely challenging.

19 Do I understand you to be saying that
20 unless or until both the Justice Department finishes

21 its exercise to amend the Johnson Act and,
22 thereafter, the National Indian Gaming Commission
23 promulgates rules regarding the parameters of
24 Class II gaming, you won't invest a nickel in any
25 gaming equipment?

1 MR. GARCIA: No. What we're asking you is
2 to please hold off on promulgating these rules and
3 implementing them until after the Department of
4 Justice issue has been resolved, because what we
5 foresee, given the Federal court cases that have
6 come down and the requirements that you have to jump
7 through for the administrative procedure, we see
8 more litigation. Someone is going to file a
9 lawsuit.

10 And under those circumstances, trying to
11 get funding through a lender to build a casino is
12 going to be very difficult, and if we get the money,
13 we're going to pay top dollar for it. And we're
14 just saying that caution is sometimes the most
15 prudent way to go. That's all.

16 CHAIRMAN HOGEN: We share that concern.
17 And a year ago in September the Justice Department
18 announced they were going to seek an amendment to
19 the Johnson Act to carve out an exception for these
20 technologic aids from the prohibition that there

21 can't be gambling devices in Indian country without
22 a compact. And we were glad to hear that they were
23 going to do that. That would resolve some of these
24 problems.

25 However, when the spring rolled around and

1 they still hadn't sent anything to Capitol Hill, out
2 of a concern that there is this lack of clarity, the
3 tribes really don't know what they can invest in, we
4 felt it incumbent upon us to go through with the
5 regulatory process.

6 Now, they finally, not long ago, sent to
7 Capitol Hill a proposal, and it envisions NIGC
8 promulgating and enforcing regulations. I think
9 what we are doing is very consistent with what
10 they've proposed, but there's no assurance that what
11 they've proposed will ever be enacted. And if we
12 wait until that eventually plays out, I think tribes
13 like yours will remain in that uncertain area, and
14 it will not solve the economic problems that need to
15 be solved.

16 We desperately want the Indian Gaming
17 Regulatory Act to work like it's supposed to, to
18 provide economic opportunity to tribes, particularly
19 those who are so in need of economic development.
20 We think the very best thing we can do is bring

21 clarity to this uncertain issue.

22 Now, we've been consulting here for four
23 days this week, two here in California, two up in
24 Tacoma. And before that, we consulted with
25 tribes -- where were we last?

1 MR. CHONEY: Bloomington.

2 CHAIRMAN HOGEN: -- Minneapolis, talking to
3 the tribes on the Great Lakes and the Great Plains.
4 And we're getting a lot of advice, and not everybody
5 likes what we propose. But it is often said it will
6 be good when this area is clarified so that, you
7 know, we won't be clouded in mystery. We know we
8 can go forward.

9 Now, you mentioned these court cases. And
10 the court cases, we've studied very carefully. The
11 main machine -- gambling device that was focused on
12 in those devices was what they called the MegaMania
13 bingo machine. That was a machine that you had to
14 have 12 players before you could start to play,
15 there had to be 48 bingo cards in play, and it took
16 over a minute to play that game.

17 Now, we've drafted some regulations here
18 that, you know, based on that theory, could be
19 played by as few as two players. It could be played
20 as quickly as 10 seconds, six times faster than the

21 one that was in the court cases.

22 But we strongly believe that Congress was

23 serious when it said you've got to be able to tell

24 the difference between Class II and Class III. If

25 we lose sight of that, then I'm concerned that

1 states like California will come along and say,
2 either, "Congress, this isn't what was intended.
3 NIGC is asleep at the job. They didn't promulgate
4 those standards they were directed to promulgate."
5 Or they'll say, "Why are we just letting the Indians
6 do it? Let's let everybody do it."

7 And then who's going to drive to the
8 reservation or wherever the site is to gamble if
9 they can do it in downtown San Francisco or downtown
10 Los Angeles?

11 So we're trying to preserve this tool
12 that's become so successful so many places, Indian
13 gaming, without taking us back to the stone age but
14 drawing a bright line so we can get on with it.

15 But we are, you know, very acutely aware of
16 how desperately many tribes need tools and how
17 difficult it is for them to go the Class III route.
18 So we need clarity for a fun, attractive, profitable
19 vehicle to do Class II gaming, but still preserves
20 that difference that Congress intended when they

21 said there will be a difference between technologic
22 aids to the play of Class II and electronic
23 facsimiles of games of chance that are Class III.
24 So we will seriously consider what you've
25 told us and, as you further study what we've

1 proposed, if you have specific suggestions about how
2 we're doing this, we'd welcome those and would
3 certainly consider them as we try to write rules
4 appropriately.

5 And before we, you know, send the final
6 draft to the Federal Register, if we do, we'll ask
7 ourselves have we got the cart in front of the
8 horse? Should we wait for the Justice Department?
9 I hope we don't do that, because I think that will
10 be so long in coming that it will, you know, create
11 more uncertainty rather than less.

12 MR. GARCIA: But I just would respectfully
13 like to say that if everything was left the way it
14 is at this moment and we opened up a casino and we
15 had Class II gaming, it would be profitable for us.
16 We could go out and purchase the machines. We could
17 get the money to do it.

18 If, in the middle of all of this, the
19 regulations are implemented and the banks are not
20 sure how this is going to pan out, the cost of money

21 goes up. If the cost of money goes up, it's harder

22 to keep the casino open.

23 And looking throughout Indian country here

24 in California, I don't see what the big deal is with

25 the State of California. You know, they have

1 compacts where they get as much as 25 percent off of
2 Class III machines. You know, how -- how is
3 Class II, the way it presently is, is it hurting the
4 State of California? The money that is being
5 generated from these present Class II machines are
6 indeed helping the California tribes, and I don't
7 understand that if it's working for the tribes and
8 the money is coming in for the tribes, why are we
9 focusing on changing the rules when the whole
10 purpose is to generate money so that the tribal
11 government is strengthened through the money coming
12 in? I don't understand that.

13 And reading -- and I've read the Federal
14 Register at least a half a dozen times, and I don't
15 understand where you're saying that if you have a
16 machine with your changes that -- how is that going
17 to help Indian country in California? I don't
18 understand.

19 CHAIRMAN HOGEN: Well, there was a similar
20 situation in Oklahoma in the late 1990s, where

21 tribes couldn't get compacts, and so they put
22 equipment on their floor to do Class II gaming and
23 it clearly crossed the line. It was Class III
24 equipment that they didn't have a compact to play.
25 So NIGC asked them, "Please take that out. Don't

1 play that anymore." And they ignored NIGC, and
2 eventually their facility was closed. Not just the
3 machines that crossed the line, but all of them, and
4 they were assessed a fine of \$9 million. And it was
5 years before they were able to get back into gaming.
6 And the reason they got in that fix was there wasn't
7 clarity as to what they could or couldn't do.

8 We don't want Karuk to be in that similar
9 situation. We want you to be able to know, if and
10 when you have a place to do gaming and you're going
11 to do Class II gaming, that you're on solid ground.
12 You can invest in that equipment. You can take the
13 regulations to your lender and say, "Look. This
14 equipment that we're going to put on our floor will
15 be certified as Class II in accordance with these
16 Federal regulations." You can take that to the
17 bank. And until we get there, we're going to have
18 that -- that problem.

19 And I believe that much of the equipment
20 that is currently being played in Indian country,

21 where you just touch the button once and the machine
22 does everything else, it's auto-everything, that
23 that wouldn't pass the Class II test. And they're
24 putting all of, you know, their gaming and that
25 economic development at risk by doing that.

1 So those are our concerns. And we'll
2 listen carefully to what you've said as well as the
3 other tribes, and at the end of the day try to do
4 the right thing. But your points are well made, and
5 I appreciate the statement.

6 MR. GARCIA: I don't want to go around and
7 around on this, and I know I've run out of time, but
8 I want to say one more thing. I think you're going
9 to find yourself in a worse situation and tribes are
10 going to find themselves in a worse situation if you
11 implement these rules. And everybody knows that the
12 Administrative Procedure Act is right there facing
13 everybody down the barrel there, and you've got the
14 courts sitting there and you've got the Department
15 of Justice coming in with something three years down
16 the road, then everything is much worse at that
17 point than it is right now. We don't have a crisis
18 right now.

19 But imagine what it's going to be like if
20 you have two or three Federal court cases coming

21 down the pike in different parts of the country and
22 you're having to face all of this litigation over
23 these proposed changes. That is going to be a much
24 worse situation because, if we like it or not, the
25 people that are going to raise these issues are the

1 people who really have the money to litigate these
2 things as horribly as you can. And it's tribes like
3 us, that are in really bad shape, that are not going
4 to raise a peep. But this is just going to -- it's
5 just going to open a Pandora's box.

6 So I don't want to argue, I just want you
7 to really consider where we could be, how much worse
8 we can be five years from now if we're not really
9 careful with this. That's all.

10 And I thank you very much for your time.

11 CHAIRMAN HOGEN: Thank you.

12 (End of Karuk Tribe of California
13 discussions.)

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1 DRY CREEK RANCHERIA BAND OF POMO INDIANS

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3 CHAIRMAN HOGEN: Good afternoon. Welcome.

4 I'll Phil Hogen, Chairman of the National

5 Indian Gaming Commission. Here with me is Associate

6 Commissioner Chuck Choney. We're the National

7 Indian Gaming Commission these days.

8 We have staff members here. Joe Valandra

9 is our Chief of Staff. Next to him is Michael Gross

10 and next to him is John Hay. They're attorneys in

11 our Office of General Counsel. As you know, Eric

12 Schalansky is the regional director for us out in

13 Sacramento, and Alan Phillips is in the Sacramento

14 office. Natalie Hemlock is an assistant to the

15 Commission in the D.C. office, and Penny Coleman is

16 our Acting General Counsel.

17 On the 25th of May of this year, we

18 published in the Federal Register some proposed

19 regulations dealing with definitions and proposed

20 regulations dealing with how you would distinguish

- 21 electronic and technologic aids that can be used
- 22 with Class II gaming that you can do without a
- 23 tribal/state compact from those electronic
- 24 facsimiles of games of chance that you have to have
- 25 a Class III compact to do.

1 And we are eager to hear what tribes think
2 and what they have to say about the proposals we
3 have made. And after we get all of this advice and
4 take it under consideration, we'll decide shall we
5 go forward with regulations and, if so, should they
6 be changed, based on what we've learned during this
7 process.

8 So having said that, if you will introduce
9 yourselves here on the record so the court reporter
10 will know who's who, we'd very much like to hear
11 your comments and questions, if any, regarding this
12 proposal.

13 MR. SMITH: My name is Bruce Smith, and I'm
14 on the Tribal Council. Actually, member at large,
15 actually.

16 MS. JOHNSON: I'm Linda Johnson. I'm one
17 of the gaming commissioners.

18 MR. SMITH: We kind of inherited, I guess,
19 this trip here. We kind of knew about it.

20 I guess the only thing that I would want to

21 bring out right up front would be that we run a
22 Class III operation where we're at, and so there's
23 no Class II machines on the floor. And so it makes
24 it difficult to kind of talk about a regulation that
25 at the moment doesn't really even apply.

1 But I am concerned about the timing of the
2 proposed regs, when there's a lot of other things
3 that are in the air right now, regulations that are
4 being looked at, changes to IGRA, those types of
5 things. And I just -- at some point in time, I'd
6 like to make sure that the tribes get the best shot
7 at leaving their options open and making something
8 that's going to be viable for consideration.

9 And I just get nervous when sometimes, like
10 I say, last-minute stuff to -- and I know a lot of
11 this ends up being -- without sounding like I'm
12 talking out of school, it becomes reactionary.
13 Somebody puts it on their list that we need to get
14 this done. But if too many things are on the list
15 that we need to get things done, I would like to
16 make sure if there's an opportunity for us to
17 operate Class II machines that are economically
18 viable; that we don't say in retrospect maybe we
19 should have been there at the time before they
20 slowed them down so slow or they did this or did

21 that because prior to that, they would have been a
22 reasonable choice.

23 And again, I just -- I put that out there
24 because we do have -- you know, I've got a '99
25 compact for my Class III machines here in the state,

1 but there is no machine licenses available for me to
2 add to go up to my limit. So if I wanted to
3 increase my floor space with something in the way of
4 a viable Class II machine, I'd like to make sure it,
5 again, is economically feasible. And that's my
6 concern.

7 I haven't -- my floor space isn't big
8 enough right now to put them on the floor, so it's
9 not an immediate concern. But when it is a concern
10 and it is a choice, I'd like to make sure that I can
11 have my best option available to me. And so
12 that's -- since I haven't really looked into whether
13 or not percentage-wise, how much this is going to
14 affect, say, a revenue stream or whatever generated
15 by changing the reg from what it is presently to
16 what you're considering, I -- I do know that at some
17 point it will be a consideration. And it obviously
18 will be, again, after this regulation is already
19 done, so I want to make sure that we keep in mind
20 the availability of an operation as we set the

21 regulation for it as being an important aspect

22 moving forward.

23 And, again, that's probably the only reason

24 why I said, we -- I just needed to come down here

25 and go on record and say that while the regs

1 probably make -- they're more important to the
2 people operating Class II machines or about to put
3 in a Class II machine, neither of which -- you know,
4 I'm not a part of that, but I want to make sure that
5 if at some point that becomes the economic engine
6 that, you know, my choice is geared towards, I want
7 to make sure that we at least had the opportunity to
8 speak on it.

9 So I know Linda has a couple of additional
10 things.

11 MS. JOHNSON: I just have some questions on
12 a little bit of the process here, because a while
13 back there was a proposal for Class II games. It
14 did get through a process that got pulled off of the
15 table. Now we have this proposal in front of us for
16 Class II regulations.

17 What is the process that the NIGC
18 anticipates with this? It came out on the 25th. We
19 have, you know, until August the 23rd to comment on
20 it. And what -- what is the process after that

21 comment period?

22 CHAIRMAN HOGEN: Okay. Let me address

23 that. You know, you're absolutely right, Bruce,

24 that there are a number of things in the air right

25 now. One thing that I would like to change, if I

1 can, as the Chair of the Commission, is the
2 Commissioners aren't getting any younger. I can't
3 change that. That is -- time is passing by, and
4 we've been at this exercise of trying to clarify
5 Class II, Class III for a long time. And right now
6 there is legislation before the Congress that would
7 address the Indian Gaming Regulatory Act and so
8 forth.

9 But as you have observed, for literally
10 years now we've been talking about this issue and
11 drafting some regulations. Last spring, with the
12 assistance of the Tribal Advisory Committee we had
13 assembled, based on the fifth draft of this
14 classification standards that we published on our
15 website, we were getting ready to do what we did
16 now, just go to the Federal Register and propose
17 this, when our brethren within the Justice
18 Department within the Federal family tapped us on
19 the shoulder and said, "We're not so sure this is
20 consistent with the Johnson Act."

21 So we discussed this with them basically
22 all last summer. And last fall they announced that
23 they were going to seek an amendment to the Johnson
24 Act, so there would be carved out of that
25 prohibition of gambling devices in Indian country

1 rulings for technologic aids that tribes could use
2 for Class II gaming. And in that package, they
3 would -- or Congress would, if they enacted the law,
4 direct NIGC to write regulations saying chapter and
5 verse, this is what a Class II device can do.

6 And they then consulted with the tribes,
7 and they learned a lot during that process, and they
8 modified their proposal. And they kept telling us,
9 "Any day now we're going to go up to Capitol Hill
10 with this and try and get it changed."

11 In the meantime, we were kind of spinning
12 our wheels, and more and more games started being
13 played as Class II games that really went beyond
14 what our vision of what Class II was. And rather
15 than rush out there and start doing enforcement
16 actions and having more lawsuits and impose more
17 fines, we thought let's get that set of regulations
18 out there so that there will be clarity here, and
19 the tribes will know what they can and can't do, at
20 least in our view. And if they disagree with what

21 we've proposed, I'm sure they can take us to court

22 and maybe we'll get it straightened out.

23 So this spring, on the 25th of May, we said

24 to the Department of Justice, "We really can't wait

25 any longer. Good luck with your proposal, and we're

1 going to propose these regulations." So we've done
2 that.

3 And at almost the same time, they then sent
4 their proposal up to Capitol Hill. So we have, on
5 parallel tracks, the Department of Justice proposal
6 to Congress to amend the Johnson Act, which would
7 provide that the NIGC write regulations, as well as
8 the NIGC going forward with a set of regulations.

9 We've conducted quite a number of
10 consultation sessions with tribes, including this
11 one, and we've got more scheduled. Very likely, we
12 will add a public hearing to this process. We may
13 well extend the date for written comments. We're
14 also going to get out the door next week, I think,
15 our package of technical regulations. They were
16 part of that process that was developed with the
17 advisory committee.

18 And hopefully, this fall we will, first of
19 all, decide are we going to go forward with this
20 process; and secondly, if so, are we going to make

21 some changes to what we had drafted? And if all
22 that's true, we'll publish, in the Federal Register,
23 final regulations. And then there will be a period
24 of time within which they will become effective, and
25 that will start the clock running when tribes will

1 be required to come into compliance. That is, to be
2 sure that all of the devices that they play on the
3 bingo hall casino floors as Class II have been
4 certified by an independent gaming laboratory as
5 meeting the NIGC regulations.

6 So we're talking, you know, probably about
7 a year away, maybe best case scenario, before it's a
8 done deal. But hopefully, this fall those things
9 will start to take on their final form.

10 MS. JOHNSON: Okay. And one of the things,
11 like Bruce said, we're not involved in Class II. So
12 a little bit of it is, you know, a little foreign to
13 us as a tribe.

14 But I had a couple of questions in the
15 summary on 13, on the game must be run -- in section
16 C, Item 2 -- with the minimum number of players.
17 And maybe I can get a little bit of clarification on
18 that. The system must require a minimum of two
19 players, and I understand that from Class II. But
20 then there's a No. 2 section that will require

21 either two seconds or six players before a game may

22 begin.

23 So is that -- is that part of it just to

24 keep the game slow, or what is the -- what is that

25 requirement for, that -- that time delay?

1 CHAIRMAN HOGEN: As we studied the Indian
2 Gaming Regulatory Act and the legislative history
3 and the cases that have been decided since that
4 time, one of the theories that evolved was this
5 technology that was going to be added or permitted
6 was there, in part, to increase participation. I
7 think one of the ways that got started was tribes,
8 on their individual reservations, decided look, if
9 we network these together by telephone lines or
10 satellites, we can give away bigger prizes, and that
11 will attract more people. And it worked.

12 And so we thought well, if these machines
13 are permitted to start playing with just two
14 players, that's the way it will always work. And so
15 maybe we ought to give a little hesitation there so
16 that you can have more players participate.

17 So we didn't want to slow the game down
18 forever, but we thought two seconds isn't
19 unreasonable to permit more than two players to
20 join. And perhaps, you know, dozens of players will

21 join, depending on how busy your hall is or if it's
22 connected with other halls at that moment in time.
23 There will probably be more times at 2 o'clock in
24 the morning on Tuesday night that you have to wait,
25 you know, for six players to arrive than you would

1 on, you know, at 9 o'clock on Friday night.

2 MS. JOHNSON: I was just curious -- like I
3 said, it is -- some of the technology we're not
4 familiar with, only when we go to other areas that
5 have Class II. And it is across the gamut as far as
6 seeing the games and understanding, because there's
7 a little bit different technology out there. But I
8 was just curious on that.

9 And I guess some of the other things is
10 that in -- in the games itself, for the bonusing
11 part of it, is the bonusing part -- is that also a
12 bingo card? Is that how the -- this is written in
13 there? It has to kind of still be on the same play?
14 Because I've seen some bonusing systems that -- I'm
15 kind of confused when I go into some facilities.

16 CHAIRMAN HOGEN: Okay. As you probably
17 know, in addition to writing these regulations, from
18 time to time we have issued advisory opinions saying
19 this game or that game appears to be a Class II
20 game.

21 Some of the proposals we got said okay, you
22 play bingo, and then the winner of the bingo game
23 gets to spin the wheel to decide what prize they
24 want. Well, when we looked at that we thought well,
25 that's creative, but only part of it is Class II,

1 only the bingo part. The spinning the wheel moves
2 it into Class III.

3 So if you're going to do Class II, the
4 prizes that are given away have to be based on the
5 result of a bingo game. So if you go to some of
6 these games we've written opinions on, usually there
7 will be a button you can push to give you the pay
8 table, and it will show these various patterns on
9 the bingo card that if you get that pattern, you win
10 such and such a prize.

11 And so all bingo games have to be the way
12 traditional was. That is, you play to get the
13 game-ending pattern. But you can also give away
14 these interim prizes. That is, if you get four
15 corners before the game is over, you can win a
16 prize. Or even after the bingo game is over, we'll
17 keep calling numbers to see if somebody gets the "L"
18 pattern or whatever.

19 So we said yes, you can give away interim
20 prizes, you can give away consolation prizes, you

21 can have progressive prizes. That is, a little bit
22 of everybody's bet goes into the pot, and then if
23 somebody gets that unusual pattern, they win the big
24 prize.

25 But it all has to be based on bingo. You

1 can't have some spin the wheel or other aspect to
2 it.

3 MS. COLEMAN: But you can have a spin the
4 wheel. It just has to have a -- the prize still be
5 completely associated with the winning. So in other
6 words, it's like some slot machines that -- you'll
7 already know -- or the machine already knows that
8 you won \$2,000. And so it will come up and say
9 you've won \$50 plus the chance for a bonus. And
10 then it will say, "So press here," and it will spin
11 the wheel. And then it will make you think that
12 you've won \$1500, but in fact, you'd already won the
13 2,000. It's just an extra step.

14 MR. SMITH: It's not an additional random
15 generator.

16 MR. GROSS: It's entertainment.

17 MS. COLEMAN: It's just entertainment. So
18 you can do the entertainment.

19 MR. GROSS: It's a bingo prize, dressed up.

20 MR. SMITH: That's pretty much it. See, I

21 didn't come down with a lot -- the only thing I
22 wanted of kind of ask, whether or not -- as you do a
23 proposed, I guess, applying the rules here, is
24 whether or not we actually do a hard examination of
25 kind of the economics of it because of -- the

1 difficulty that I have from my own viewpoint and
2 what I've been trying to get accomplished lately,
3 and that is that I have a 20-year compact that
4 already has some years already on it. And I don't
5 really know what my next compact or whether I'm
6 going to be able to even acquire a compact that I'm
7 going to agree to, just from seeing some of the
8 compacts that have come out of this particular
9 state.

10 And I know you don't really worry about it
11 from a state-by-state basis, but I do. And there
12 are very successful operations running in this
13 state. But it's not as -- it's not as fair across
14 the board that automatically if I open a facility
15 and I go get my compact with the governor because,
16 first of all, I can't get another '99 compact. It's
17 not available to me. And I can't get an extension
18 on my '99 compact. The stuff I already have in
19 there that I'm able to operate right now. I already
20 know once I go for longer terms, I'm going to be

21 looking at something else.

22 So as I do this, I want to make sure that

23 you understand from my viewpoint that I want to be

24 on equal footing with somebody when I do this. If

25 the footing isn't equal in today's market when I go

1 to look at what's being asked for by the governor's
2 office for his compact. It's not '99 again, even
3 though I might have said in '99 it was unfair.

4 But I just need to make sure that if it
5 gets to that point where, again, I need to add some
6 Class II machines and whatnot, that you understand
7 that all I'm trying to do is make this thing
8 economically viable. I'm not trying to change
9 anything anywhere.

10 And I would assume that that would be
11 probably a main concern of yours as well, that while
12 we -- while we can adjust the line and make that
13 bright line between Class II and Class III, we just
14 need to make sure that the line includes a
15 profitable Class II, at least as it pertains in this
16 state for those people that are going to use it.

17 I don't know if the numbers are ever, you
18 know, put together, examined, you know, forecasted
19 or anything else as to what happens when we make
20 this change, what does that mean to the economic

21 viability? I'd like to know that up front, because
22 I'd like to know how much I need to, you know, voice
23 my opinion. At the moment, I don't know. But I'm
24 assuming that -- you know, I'm just -- I'm assuming
25 that maybe you might have some clue as to, you know,

1 how that really affects Class II gaming in this
2 particular state, because it is -- it is a moving
3 target.

4 CHAIRMAN HOGEN: We know that Congress
5 didn't intend to have games available to tribes
6 without compacts only that were not economically
7 viable. It needs to be economically viable. The
8 games that were considered by the courts, for
9 example, the MegaMania game, took 12 players to
10 start and took over a minute to play, and I think
11 you could only win a \$15,000 prize.

12 The games that could be played under the
13 rules that we've drafted now, but we might further
14 change, you could play six games during a minute and
15 you could play with as few as two players. And you
16 could be in a progressive, where you could win a
17 million dollars.

18 So we think if MegaMania was viable, this
19 one ought to be viable too. Undoubtedly, if you set
20 a Class II game next to a Class III game, probably

21 the Class III game will be faster and more
22 profitable, but they don't have to worry about
23 including some of those elements that the Class II
24 does.
25 So we will take your situation and those

1 similarly situated into consideration as we try to
2 look in the crystal ball and do the right thing
3 here.

4 MS. JOHNSON: Thank you.

5 CHAIRMAN HOGEN: Thank you.

6 (End of Dry Creek Rancheria Band of Pomo
7 Indians discussions.)

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1 AGUA CALIENTE BAND OF CAHUILLA INDIANS

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3 CHAIRMAN HOGEN: We'll go on the record,
4 then, and I'll say welcome to the
5 government-to-government consultation.

6 I'm Phil Hogen, Chairman of the National
7 Indian Gaming Commission. We're here in Ontario,
8 California, on the 27th of July, 2006, pursuant to
9 the publication in the Federal Register of some
10 proposed definitions changes and regulations that
11 deal with the issue of how one distinguishes
12 electronic and technologic aids that tribes can use
13 to place Class II games versus electronic facsimiles
14 of games of chance that become Class III that
15 require compacts.

16 With us here, Chairman -- or strike that --
17 Associate Commissioner Chuck Choney. Chuck and I,
18 today, constitute the full NIGC.

19 Joe Valandra is our Chief of Staff from our
20 Office of the General Counsel. Michael Gross and

21 John Hay are seated down there. And I think you
22 know Eric Schalansky, who is our Regional Director
23 from the Sacramento office.
24 From his office is Alan Phillips. I
25 usually call him the wrong name, so I got it right

1 this time. Natalie Hemlock is an assistant to the
2 Commission from our Washington office; and Penny
3 Coleman is our Acting General Counsel. So we're
4 eager to hear your comments regarding our proposals.

5 Perhaps, first of all, you could introduce
6 yourselves on the record here so the court reporter
7 will know who is who with respect to your comments.

8 MR. MILANOVICH: Thank you, Mr. Chairman.
9 Richard M. Milanovich, Chairman Agua Caliente Band
10 of Cahuilla Indians. On my right, Bernie Simons,
11 Special Gaming Council. On my left is Alva Johnson,
12 our Governmental Affairs Director.

13 CHAIRMAN HOGEN: Very good. What do you
14 think of our proposals?

15 MR. MILANOVICH: Not very much.

16 CHAIRMAN HOGEN: Would you care to go into
17 any detail?

18 MR. MILANOVICH: Mr. Chairman, I mean,
19 we -- we have had all the faith in the NIGC since
20 its inception, thinking that it was established as a

21 separate Federal agency, number one, to help guide
22 tribes in the regulatory aspect of Class II gaming.
23 Granted, there now has been this move
24 underfoot attempting to go into Class III
25 regulation, which has not yet been resolved. But as

1 it stands, the Class II regulations and guidelines,

2 I guess you're calling them --

3 CHAIRMAN HOGEN: These would be
4 regulations.

5 MR. MILANOVICH: Okay. Regulations.

6 We still feel that it's somewhat infringing
7 on the Commission's authority, allowing the Justice
8 Department to step in and usurp your authority, your
9 powers that be. We still feel that it's wrong that
10 the Justice -- the Commission is more or less
11 acquiescing to the Justice's moves on your
12 responsibility.

13 Tribes across the country look to you and
14 the Commission as protecting tribal gaming rights.
15 And with these new regulations, which I think
16 somehow they've been promulgated with the Justice's
17 perspective, it's going to have a very negative
18 impact on tribes.

19 We, ourself, are very, very close to
20 negotiating a new compact, an amendment to our

21 present compact with the governor of California.
22 But failing that, failing that opportunity to reach
23 agreement, and quite -- we're within weeks,
24 potentially, of having some sort of a signed
25 agreement, a new agreement with the State. But

1 there's always that -- we know full well that unless
2 we have the opportunity to use these Class II gaming
3 devices that are presently available to us -- the
4 governor is aware of it too. This is like the
5 proverbial ace up the sleeve, although it's not very
6 well hidden. We don't want to hide it.

7 But if we don't have an opportunity to sign
8 an agreement with the State, we could always use
9 those Class II devices, such as other tribes in
10 California, such as other tribes across the country
11 in states where the governors, state legislatures,
12 refuse to negotiate. Because as we know, until such
13 time as the Seminole decision is rectified somehow,
14 we're out there on a very short -- short limb.

15 CHAIRMAN HOGEN: Well, I appreciate those
16 concerns. And we take the view that this will help,
17 not hinder. And let me tell you why.

18 We don't think we're changing the rules, we
19 think we are maybe, for the first time, stating the
20 rules or clarifying the rules. That is, Congress

21 said, "Tribes, you can use technologic aids to play
22 Class II." But they said, "If you use electronic
23 facsimiles of games of chance, you're playing
24 Class III."
25 And there's not a lot to guide us just what

1 separates the two. But Congress, in addition to
2 saying that, created the National Indian Gaming
3 Commission and directed us to write standards. So
4 we've studied the Act, we've studied the legislative
5 history of that Act, we've studied the court cases
6 that have been decided trying to decide whether
7 things are or aren't permissible under IGRA or
8 whether they are or aren't prohibited by the Johnson
9 Act.

10 And I have concluded that one of the
11 threads that runs through that is there's got to be
12 player participation in these games like bingo. You
13 can't just have it totally automatic. If it becomes
14 totally automatic, it's become that electronic
15 facsimile that Congress said was Class III.

16 So we're trying to come up with an
17 arrangement that will permit tribes creativity and
18 flexibility to use automation, such as autodaub to
19 play these games faster, to make them more
20 entertaining, yet not lose that player participation

21 aspect that we think is critical.

22 Now, one of the games that was focused on
23 in most of those cases that are talked about and
24 decided leading to this was the MegaMania bingo
25 game. The MegaMania bingo game, which is still

1 being played in many places around the country, is
2 kind of a clunky bingo terminal that you have to
3 have 12 players playing before you could start it.
4 There had to be 48 bingo cards, and it would take
5 about a minute to play that game.

6 What we've written here, what we've
7 proposed would permit just two people to play. You
8 could start almost instantaneously, although we
9 think it's appropriate to allow a little time there,
10 if you don't have more than those two to play, to
11 allow others to get on board, and to play the game
12 in about 10 seconds. And you could give away
13 progressive prizes. I think MegaMania had a \$5,000
14 top prize. Here, you could configure it so you
15 could give away a million-dollar progressive prize.

16 These would not totally replicate or
17 probably compete perfectly with Class III devices
18 that can be instantaneous playing with one push of
19 the button and be a -- you know, a random-number
20 generator. But we think they'd be fast, fun, fair,

21 attractive and profitable. And we're listening to
22 what tribes have to say about don't slow them down
23 too much and don't be too critical.
24 The Justice Department started out saying,
25 "We want to call the shots," but I think we did what

1 you suggested the Act directed us to do: carried the
2 torch for the tribes and said, "No, Justice
3 Department, we are the ones who have the expertise
4 and have the interest of the tribes at heart. We
5 ought to write these regulations. We'll bear in
6 mind that you still have the responsibility to
7 enforce the Johnson Act."

8 And so after those conversations, they
9 modified their proposal, said, "No, we won't have to
10 approve what NIGC said." Now, that hasn't become
11 the law of the land yet, but they have sent that
12 proposal to Congress.

13 And so we're trying to proceed on a
14 parallel track here with our proposed regulations
15 and hopefully, at the end of the day, we'll achieve
16 the goal, have clarity.

17 So if Agua Caliente or anybody else finds
18 that negotiations have fallen apart and you've got
19 to look to Class II, you'll know where you can go.
20 You can invest in machines, millions of dollars, and

21 know you're on solid ground; that not the Justice
22 Department or NIGC is going to come along the next
23 day and say, "Sorry, those are Class III. You don't
24 have a compact, take them off the floor."
25 So that's our goal. And we probably

1 haven't put together a perfect product just yet, but
2 we're working on it.

3 MR. MILANOVICH: Mr. Chairman, I
4 understand. And I understand the -- I guess the
5 pressure that you, yourself, and the Commission is
6 under and the staff is under from the Justice
7 Department as well as others within Congress to try
8 and correct what they see is rampant Class II
9 facilities being -- springing up across the country.
10 But by the same token, there have been three levels
11 of the -- what? -- 9th, 8th, and 7th Courts have all
12 rendered decisions about Class II, outlining their
13 acquiescence to what was initially proposed.

14 And Ms. Coleman also, pardon me, had a very
15 nicely done paper that also supported, based on
16 those opinions. And we seem to be deviating from --
17 or you seem to be deviating from those, getting more
18 stringent, when we don't think it's necessary that
19 you take those positions.

20 CHAIRMAN HOGEN: We have, through our

21 Office of the General Counsel, issued a number of
22 advisory opinions, building upon those cases that
23 were decided. And those cases are getting kind of
24 old, and they really dealt with some very
25 rudimentary equipment that doesn't compare, doesn't

1 even come close to what's out on these floors today.

2 MR. MILANOVICH: We should be thankful we
3 live in a society which is very creative as far as
4 doing something in the case of manufacturing gaming
5 devices. I mean, we realize that they're right on
6 the edge, I mean, Class II, Class III. There's, in
7 many instances, not much --

8 When I go to Oklahoma -- when we were in
9 Oklahoma last year, I mean, I was amazed at seeing
10 those devices there. And I said, "Those are
11 Class II. I'd sure like to have some of those in
12 California."

13 CHAIRMAN HOGEN: Therein lies the problem,
14 Mr. Milanivich. Some of those, I don't think are
15 Class II.

16 MR. MILANOVICH: Well, the ones --
17 presently, you -- the Commission authorizes two
18 devices; correct?

19 CHAIRMAN HOGEN: No. We have several
20 advisory opinions.

21 MR. MILANOVICH: Okay. I'm aware of the

22 two, anyway, that -- the ones they keep talking

23 about in our meetings that we have with groups.

24 What's wrong with that?

25 CHAIRMAN HOGEN: Well, what's wrong with it

1 is each time we wrote one of the new opinions, we
2 discovered we left something out on the last one.

3 MR. MILANOVICH: Penny did a great job on
4 the opinions.

5 CHAIRMAN HOGEN: So we said this is a
6 cumbersome, ineffective process. We would be much
7 better served if we write the rules and then
8 everybody will have a bright line to go by. Maybe
9 we haven't got that line in the right place yet, but
10 we're working on it.

11 We understand in order to be economically
12 viable the games have to be attractive, and in this
13 instant gratification era that we live in, they have
14 to compete with the other stuff. But unless or
15 until Congress says it's okay to be an electronic
16 facsimile of a game of chance and still be Class II,
17 we're going to have to clarify where that line is.

18 MR. MILANOVICH: Does that mean amending
19 the Johnson Act?

20 CHAIRMAN HOGEN: If Congress could amend

21 the Indian Gaming Regulatory Act to say some kinds
22 of electronic facsimiles of games of chance could be
23 Class II. And that's one of the things that we're
24 addressing in our definitions change.

25 The last Commission amended the NIGC

1 regulations to say, "Well, you can't use an
2 electronic facsimile of a game of chance and still
3 be Class II unless it's bingo."

4 Well, we don't find that anyplace in the
5 Indian Gaming Regulatory Act. We think that even if
6 it is bingo or even if it is pull tabs or a game
7 similar to bingo, if it's an electronic facsimile of
8 a game of chance, it falls into that Class III
9 category.

10 We also think that they -- and the previous
11 commission to that went too far when they said a
12 game similar to bingo can't be a banked game. That
13 is a bright line, an easy way to distinguish some of
14 these things, but there doesn't seem to be anything
15 in the Indian Gaming Regulatory Act to prohibit
16 that.

17 You know, we probably could argue about
18 what is or isn't a banked game. And bingo kind of
19 has a paramutuel concept to it. That is, people buy
20 their cards, you play, you win the money. And

21 typically that's the money they paid in. But if you
22 advertised a \$100,000 game and there was a blizzard
23 or there was a sandstorm that day and only seven
24 people showed up, you'd probably have to still give
25 away the prize. And that wouldn't be the players'

1 money, it would be the house's money.

2 So bingo is played, particularly when you
3 have these consolation and interim prizes, in kind
4 of a nonbank -- or strike that -- a bank format. We
5 don't think there's anything wrong with that. We
6 think that will give manufacturers and tribes more
7 flexibility to be creative in designing their games.

8 MR. MILANOVICH: I think even your own
9 advisory board last year came up with some
10 recommendations which I think would be very
11 beneficial had they been adopted completely.

12 CHAIRMAN HOGEN: We were fortunate to have
13 very well-qualified people, including Joe Carlini
14 from Agua Caliente, assisting us. And we took their
15 advice seriously. We didn't accept all of it, but
16 we knew that they were sincere and had creative
17 ideas that they were offering to us.

18 MR. MILANOVICH: I think -- I mean, that's
19 why you asked them to participate, is to help the
20 Commission come up with some fresh ideas and ways to

21 address the issue at hand. And I think when they
22 did, it wasn't -- it's like putting together -- when
23 we put together a committee for the tribe, and then
24 they make recommendations to us and we don't accept
25 them, they take affront to it and say, "Well, why

1 did you ask us to serve anyway, then? You're going
2 to do what you want to do, anyway."

3 CHAIRMAN HOGEN: Well, we are a regulatory
4 body, and that puts us in kind of a delicate
5 position. There's going to be some tension between
6 the folks we regulate and us, and we've got to try
7 and call them like we see them, even though it may
8 not be popular. We're trying to do the right thing.

9 MR. MILANOVICH: Mr. Chairman, I understand
10 that completely. The tribal council makes decisions
11 that are not always popular with our members,
12 either, or members of the community too. But we do
13 what we feel is best and taking the interests of the
14 constituents at heart. And I think in your case you
15 have all of Indian country looking to you for
16 assistance to help them overcome some of the
17 obstacles that have been placed by some of the more
18 difficult governors and legislators, to come up with
19 a rightful gaming compact within their given states.
20 I mean, you're our first and last bastion

21 practically, as far as assistance. And you are an
22 independent body. You have the ability to make
23 those independent decisions. And I know you have in
24 the past, sir. I know all the staff has done.
25 Previous commissions have made some difficult

1 decisions that have not been very popular with
2 Congress or with other Federal agencies, but by
3 golly, you did it because you knew it was the right
4 thing to do.

5 And I think you still have that ability to
6 do so in a way that would still rectify the issue at
7 hand, to address the concern of the states to come
8 up with -- the states are looking for some way to
9 tax or gain revenue from gaming operations from
10 tribal government gaming. And as long as they know
11 that the Class II is not covered by that regard,
12 under a compact, they're going to fight you tooth
13 and nail. They're going to fight us tooth and nail
14 too.

15 But until such time as we have the ability
16 to sit down and negotiate fairly with the State,
17 knowing full well -- and we are willing to put up
18 some additional dollars to help the State. We know
19 that's our responsibility as well. But some states,
20 and this one too, California, they want more money

21 from our Class III than what we -- and others cede
22 other sovereignty issues to the state that we're not
23 willing to do.

24 But as long as we have the ability to offer
25 some Class II devices to thwart or to mitigate some

1 of the strong demands from the State, it makes it
2 that much more difficult for us and other states as
3 well. Other tribes in other states. I'm sure
4 you've heard this throughout the country up and
5 down. I'm sure.

6 CHAIRMAN HOGEN: We have. And you make the
7 point well, and we'll try to be guided by that as we
8 try to go to the right place.

9 MR. MILANOVICH: I know you will, sir. I
10 know you will. I know the entire Commission and the
11 staff. Your heart's in the right place. We know
12 that. We also know that the mind is being
13 controlled sometimes by Washington.

14 Bernie, do you have anything to say?

15 MR. SIMONS: The only thing I would add is,
16 you know, Michael knows the technology better than I
17 do and the way it's progressed. I think it's
18 progressed probably so fast the line has been
19 blurred.

20 And the only thing that I would ask, as

21 we've talked about previously, is that in trying to
22 do the fix, you don't go too far the other way.
23 Agua Caliente is fortunate that it doesn't have
24 Class II devices. It has Class III devices. And
25 there are other tribes in other states, of course,

1 that don't have that benefit. And they have relied
2 upon your -- I don't like to use the word "acting"
3 because he's been acting so long. They rely upon
4 your general counsel's advisory opinions in
5 investing dollars and in court decisions.

6 And, of course, your proposal gives them a
7 period of six months and an opportunity to extend it
8 another six months. I'm not sure that's really
9 enough to give them the time to try to resume
10 negotiations as well as recoup the investment
11 they've made in reliance upon Federal Court
12 decisions and advisory opinions by people that
13 really knew what they were talking about.

14 And I'd like to see if the Commission
15 couldn't try and alleviate the economic duress that
16 would be caused by even a one-year period in certain
17 states where the governors are not willing to sit
18 down and negotiate. And therefore, the tribes are
19 either going to have to close up their operations,
20 fire all their employees, or find some other

21 alternative that may not be helpful to anybody. But

22 there is an economic engine that's going to be

23 stopped in certain areas.

24 In negotiation, like the chairman said,

25 Israel -- I mean, I just had that discussion a week

1 ago. Why are you expanding? If you don't have an
2 amended compact, what are you going to put in that
3 space? My answer was real simple: "Class II
4 devices."

5 Without that ability, there's an uneven
6 negotiation going on, because the negotiation is all
7 on the side of the State at that point. And the
8 line between taxation, nontaxation, consideration
9 for exclusivity, it becomes totally blurred as well.

10 And I realize you have the regulatory end,
11 but I think you also have to look at historically
12 what's evolved, where it is today, and what impact
13 your changes would have and how can you mollify
14 those impacts and still encourage what IGRA intent
15 is, and that is good-faith negotiations?

16 Some areas, they don't exist. In
17 California, they haven't existed for three and a
18 half years. This is an election year. Things
19 change. But without that change and the tribe's
20 ability to effect a change, then they have to look

21 to the NIGC. That's all I'd like to add.

22 CHAIRMAN HOGEN: Thank you.

23 MR. MILANOVICH: You know, Bernie mentioned

24 what are we doing for the State negotiators? What

25 are you doing with what we've built -- we're in the

1 process right now of major hotel construction, new
2 hotel at our casino. We're spending like
3 \$205 million just for the hotel, another 15 to
4 20 million for casino floor expansion. On one part,
5 expecting to have some fruitful end to our
6 negotiation with the State at this time, but failing
7 that, as Andrea Hoch, the attorney, said, "Well,
8 what were you going to do if we don't have a new
9 compact?" Class II. We don't have a choice.

10 It's not a threat to the State that we use
11 that language as a red flag. We don't intend to do
12 it as a red flag. We just intend to let her know
13 that we have a big investment that we are putting on
14 ourselves, that we're assuming, and one way to
15 assist us to pay back that -- those dollars is to
16 have additional devices that we can use. We know
17 full well that, as you say, sir, they're not as
18 popular as a Class III directly.

19 But with that new hotel, we expect to draw
20 that many more people into the facility, meaning --

21 I mean, some weekends we're definitely packed. We

22 could use more devices. And that's all we're

23 looking for.

24 CHAIRMAN HOGEN: Well, you're putting a lot

25 of the tribe's money on the line, and we'll try not

1 to put you at any more risk than necessary.

2 MR. MILANOVICH: Thank you.

3 CHAIRMAN HOGEN: Thank you.

4 MR. SIMONS: Thank you.

5 CHAIRMAN HOGEN: Okay. We'll conclude the
6 discussion.

7 (End of Agua Caliente Tribe of Cahuilla
8 Indians discussion.)

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1 TORRES MARTINEZ DESERT CAHUILLA INDIANS

2

3 CHAIRMAN HOGEN: Good afternoon. Welcome.

4 I'm Phil Hogen, Chairman of the National

5 Indian Gaming Commission.

6 With me here to participate in these

7 government-to-government consultation discussions

8 we're having is Commissioner Chuck Choney. Today

9 Chuck and I consist of the whole NIGC.

10 From our Washington office, Michael Gross

11 is an attorney in the Office of General Counsel, as

12 is John Hay. And Eric Schalansky is our Regional

13 Director from Sacramento. Natalie Hemlock there at

14 the end is an assistant to the Commission in our

15 D.C. office, and Penny Coleman is our Acting General

16 Counsel.

17 We're here pursuant to some regulations

18 that the National Indian Gaming Commission published

19 in the Federal Register on the 25th of May of this

20 year dealing with proposed changes to some

21 definitions and proposed regulations that relate to
22 how you distinguish electronic and technologic aids
23 that can be used for the play of Class II gaming and
24 the electronic facsimiles of games of chance that
25 constitute Class III gaming, for which you have to

1 have a compact.

2 So having said that, I would invite you to
3 introduce yourselves to us here on the record and
4 explain how you're affiliated with the tribe and the
5 gaming operation and proposals, and then we'd very
6 much like to hear your comments about our proposals.

7 MR. TORRES: Okay. I'm Raymond Torres,
8 Chairman of the Torres Martinez Desert Cahuilla
9 Indians.

10 MR. BONNER: My name is Rodney Bonner. I'm
11 the Corporate President of the Selnek-is Tem-Ai
12 Corporation, Torres Martinez Desert Indians.

13 MR. MIRELEZ: I'm Joseph Mirelez. I'm the
14 Highway 86 Subcorp President for Torrez Martinez.

15 MS. RESVALOSO: Mary Resvaloso. I'm a
16 Tribal Council Member and also the Treasurer of the
17 Selnek-is Tem-Ai Economic Corporation.

18 MS. REED: I'm Alesia Reed, and I'm the
19 Tribal Council Secretary and the 86 Gaming
20 Secretary.

21 CHAIRMAN HOGEN: Thank you.

22 MR. BONNER: Also, I'm the Treasurer of the

23 86 Gaming Corporation -- subcorporation also.

24 CHAIRMAN HOGEN: Okay. We invite you to

25 share your thoughts or pose questions that might

1 assist us in dealing with our proposal and knowing
2 how it might affect your tribe.

3 MR. TORRES: Okay. We were pondering
4 Class II. But the transportation, now, that's going
5 to be part of the change? The transportation of the
6 machines?

7 CHAIRMAN HOGEN: That proposal -- that's
8 not embodied in the proposed regulations that we
9 have addressed. The Department of Justice, that is
10 responsible for the Johnson Act that generally deals
11 with interstate transportation of gaming devices,
12 has submitted to Congress a proposal that would
13 recognize that there are technologic aids to the
14 play of Class II gaming that wouldn't be prohibited
15 by the Johnson Act. But it does address the
16 transportation of those devices.

17 So they're kind of on parallel tracks, but
18 we aren't proposing that part of it. Rather, that's
19 the Justice Department's proposal.

20 MR. TORRES: Okay. If you could just

21 explain what you're proposing.

22 CHAIRMAN HOGEN: Okay. The Indian Gaming

23 Regulatory Act says tribes can conduct Class II

24 gaming, bingo, pull tabs, things like that, and they

25 can use computers and electronic and technologic

1 aids to do that. They also have said that slot
2 machines of any kind and electronic facsimiles of
3 games of chance are Class III gaming.

4 And they also, in the Indian Gaming
5 Regulatory Act, created NIGC and directed us to
6 write some Federal standards. And one of the areas
7 where a standard is needed is drawing that line
8 between those technologic aids on the one side and
9 the electronic facsimiles on the other.

10 In addition to the Act itself, there is, of
11 course, some legislative history: the Senate report
12 that accompanied the bill, the discussion on the
13 floor of the Congress. And then since that time,
14 there have been a number of cases, lawsuits, that
15 have addressed that.

16 There was a game called MegaMania that some
17 tribes started using. It was a bingo game. You had
18 to have 12 players playing these big clunky stations
19 before you could play. You had to have 48 bingo
20 cards in play, and it took about a minute to play

21 those games. And when they started using them
22 without a compact, the Justice Department came along
23 and said, "Hey, those are gambling devices in
24 violation of the Johnson Act, because they don't
25 have a compact."

1 So they went to court. And the court said
2 well, now, wait a minute. These devices aid the
3 players in playing bingo, but they aren't the game
4 itself. The players are actually participating to
5 play the game of bingo, so we don't think these are
6 gambling devices in violation of the Johnson Act,
7 given the fact that IGRA was passed.

8 And then there was another set of machines
9 that came along that dispensed pull tabs. And in
10 addition to dispensing the pull tab, it had a bar
11 code on the back of the pull tab that went over a
12 bar code reader, and it displayed on a video screen
13 what looked like slot machine reels. And slot
14 machine reels weren't really part of the game, they
15 just told the player, did you win or lose.

16 The Justice Department again came along and
17 said, "Wait a minute. Those are gambling devices.
18 They don't have a compact." And so they went to
19 court.

20 And the court said, "Well, they're just

21 playing pull tabs, really. The screen there is just
22 for entertainment, but the play is in that paper
23 ticket." So we have cases like that that have been
24 decided.

25 And then the manufacturers got creative and

1 they said, "Well, let's combine this concept. Let's
2 play bingo on a machine, and we'll put a slot
3 machine reel picture there, and that will tell the
4 bingo players whether they won or lost."

5 And they got faster and faster and more and
6 more complicated, and pretty soon the line between
7 what was Class II and what's Class III became so
8 blurry that we're concerned that there are tribes
9 that either are or might be playing what they think
10 is Class II that's actually Class III, that either
11 we'll have to come along and say shut those down or
12 the Justice Department will come along and say,
13 "You're in violation of the Johnson Act. You're
14 committing a crime."

15 So we think it would be useful to tribes to
16 have a set of rules, a clear standard here, saying
17 if you're going to make a big investment in
18 machines, you want to know you're on solid ground.
19 You can play these and somebody isn't going to come
20 along tomorrow and jerk the rug out and say that's

21 illegal.

22 So we put together a Tribal Advisory

23 Committee and worked, well, actually, a couple years

24 doing this. We drafted -- we did five drafts of

25 these classification standards, put them on our

1 website, held hearings, talked to people about them.

2 And finally this spring we proposed them in the
3 Federal Registry.

4 And if we finish this, basically the way it
5 will work is the rules will be final. And they will
6 say if a tribe and a machine manufacturer want to
7 play a game as a Class II game, they will send it to
8 an independent gaming laboratory. They'll test it
9 to see does it comply with these rules? And if they
10 do, they'll say okay, go ahead.

11 Now, they'll send that report to the
12 National Indian Gaming Commission. We'll look at it
13 too, and I think in almost every case, we'll agree
14 with that. If we don't agree with it, we can
15 object, and then we'll work with the manufacturer to
16 try to sort that out.

17 But then the tribes would be good to go,
18 they would be on solid ground with the machine they
19 were playing as Class II. We wouldn't be the
20 bureaucratic bottleneck. We wouldn't have to

21 approve them; the labs would approve them. I think
22 we'd have a workable system and a better system than
23 we have right now, where there's uncertainty about
24 what you can and can't do.
25 So that, very quickly and very generally,

1 is what we say here in about 20 pages or whatever.

2 MR. TORRES: So does that affect the -- I
3 guess what they call the 2.5 machine?

4 CHAIRMAN HOGEN: Well, in my view, there
5 isn't anything such as a 2.5 machine. It's either a
6 Class II or a Class III.

7 MR. TORRES: It's been called -- what? -- a
8 VLT or --

9 CHAIRMAN HOGEN: Yeah. There are all kinds
10 of formats for games. In Washington state, for
11 example, the tribes there have what they call
12 Appendix X games. That's what they negotiated with
13 the State.

14 And those are lottery terminals. You're
15 playing a machine to try to get one of the lottery
16 chances that, you know, is a prize. And so there's
17 a fixed number of those, but it's a huge pool,
18 millions and millions of chances. And you have to
19 push the button twice, one to start the game and one
20 to kind of open the pull tab or whatever to see if

21 you won. So those are video lottery terminals. But
22 if it's a lottery, that falls into what Congress
23 says is Class III. Lotteries are Class III.
24 So the games that play in Class II,
25 basically you have to be playing against another

1 player. You can't just play by yourself with the
2 machine. So if there's nobody else, either in your
3 casino or casinos you're connected with playing at
4 the same time, the game won't start. But if
5 somebody else is there to play, then it's a bingo
6 game. At least two of you are playing to see who
7 gets the pattern first.

8 MR. TORRES: Like I said, we were just
9 thinking about the Class II right now. I mean,
10 we've got the compact for 350 Class III gaming
11 devices. And we were just, you know, thinking about
12 Class II. We haven't been that involved, so we
13 thought maybe this would be a chance to find out
14 exactly, you know, is there a definition to
15 Class II? I guess not.

16 CHAIRMAN HOGEN: There isn't yet, but when
17 we get done, there will be. That's our hope and
18 plan.

19 MR. MIRELES: So that's the plan. What is
20 the time line that you're thinking that this plan --

21 you know, that these definitions will actually be
22 the definitions; that they won't be proposed
23 anymore, and they'll actually be, you know, law?
24 CHAIRMAN HOGEN: This piece, the proposed
25 classification standards are part of a package. The

1 other half is technical standards.

2 Next week we hope to publish our technical
3 standards. They talk about things like the
4 software, the hardware, how the machines have to
5 communicate with one another and so forth. They
6 really don't have anything to do with the rules of
7 the game.

8 But we will get comments on those, and we
9 think we'll probably schedule a public hearing in
10 addition to these tribal consultations that we're
11 doing later this fall or probably in September. And
12 then when we have all of this comment, all of this
13 input, we'll look at what we wrote. We'll decide
14 are we going to go ahead and if so, are we going to
15 change what we proposed because of what we heard,
16 and then we'll finalize them. Hopefully, this fall.
17 Hopefully, early this fall.

18 Then there will be a period of time after
19 they're published before they become effective, and
20 that starts the clock running when tribes will need

21 to get these games certified to play them as

22 Class II.

23 MR. TORRES: So the second part of it, is

24 that more of a vendor's guideline?

25 CHAIRMAN HOGEN: Well, it would be probably

1 a manufacturer's guideline. Your gaming commission
2 would want to know, if you've got a Class II machine
3 on the floor, that the machine complies with those
4 standards. But that's why we would have these
5 gaming laboratories, because they'd tear those
6 things apart to make sure they comply with that
7 standard.

8 MR. BONNER: How much time are you talking
9 about?

10 CHAIRMAN HOGEN: To get the rules in place?

11 MR. BONNER: Yes.

12 CHAIRMAN HOGEN: Well, if, say, on the 31st
13 of October, we publish the final rules. And it
14 depends on a couple of things, but it would either
15 be 30 days or 60 days after that, that they would be
16 effective. That would start a six-month clock
17 running when you'd need to bring them into
18 compliance. And if there was good cause and you
19 needed to extend that for another six months, that
20 would be possible too.

21 Now, that -- the people that would first be
22 worried about the six months are those people with
23 open facilities that have those machines on the
24 floor. Get them to the lab and get them tested and
25 so forth. If you're going to open a new facility,

1 you want to get your new machine into the lab and
2 tested so you can open your door with that.

3 Now, that doesn't mean, of course, that
4 every machine has to be tested, but rather, if, you
5 know, the ABC Gaming Machine Company has model 101
6 certified, they can sell that to whoever wants to
7 buy it. And as long as it's the same standards,
8 you're good to go the next day.

9 MR. BONNER: You say ABC Company. Are
10 there a lot of companies that have already started
11 or have looked at this and already started to come
12 into compliance with these rules that you have in
13 place?

14 CHAIRMAN HOGEN: Well, because nobody,
15 including us, yet knows what the final rules are,
16 nobody's sure they're there yet.

17 We have issued advisory opinions over the
18 years to kind of pave the way to get us where we
19 are, and so companies have built machines that are
20 very much like this. And I think in a number of

21 cases, all they'll have to do is make a few key
22 strokes to change the program and it will meet these
23 standards.

24 MR. CHONEY: Since California is
25 predominantly a Class III state, there are a lot of

1 tribes, such as yourself, that are planning,
2 long-range planning of getting Class II machines to
3 augment what they already have. And they're very
4 interested in this because they're going to wait and
5 see what the outcome of the regulations are going to
6 be. So we're encouraging everyone, you know, to
7 wait.

8 Now, this -- now, once we get the
9 regulations published, you're going to have the
10 advantage of knowing -- you're going to have it
11 right here in your hand, so some sweet-talking
12 vendor comes in and tries to sell you a Class III
13 machine and telling you it's a Class II, you'll say,
14 "Huh-uh. I've got the regulations right here."

15 Because that's what's happening now in a
16 lot of states, Oklahoma and here in California a
17 lot. The tribes are buying machines under the
18 impression that they're Class II, and they're not.

19 MR. TORRES: Oh, really? And Oklahoma is
20 all Class II; right?

21 MR. CHONEY: They were, but they're limited

22 Class III now. They have some games that they can

23 play.

24 CHAIRMAN HOGEN: That's just a recent

25 development, that they got compacts in Oklahoma.

1 MR. TORRES: Oh, really? Are they limited
2 to how many machines they --

3 MR. CHONEY: I think there's four -- four
4 different types that they can play. It's not
5 wide-open Class III, it's just very limited. But
6 they have to be compacted by the State.

7 MR. GROSS: I'm not sure that there's a
8 limit on the number of devices as much as there's a
9 limit on the kind of games.

10 MR. TORRES: Now, do the same regulations
11 go as far as the Class II and Class III machines?

12 CHAIRMAN HOGEN: No. I mean, the
13 classification standards would define what's
14 Class II. And what the Indian Gaming Regulatory Act
15 says, basically, is everything that isn't Class I or
16 II is Class III.

17 Now, these technical standards that we are
18 drafting probably could be applied to Class III, and
19 the day may come when we apply those to that
20 equipment too, because that goes to the integrity of

21 the system to make sure that nobody is hacking into
22 your equipment and so forth.

23 And the way this Class II game is played
24 for the most part is, you've got to be -- more than
25 one player has to be connected to a central server.

1 And that's the direction the whole gaming world,
2 Class III as well, Las Vegas and New Jersey are
3 headed, to be what they call downloadable games.
4 You can just put the program into the server and
5 change what all of the machines look like, and
6 you're playing a new game.

7 MR. BONNER: That would mesh them all
8 together, though, wouldn't it?

9 CHAIRMAN HOGEN: Pardon me?

10 MR. BONNER: Wouldn't that make them all go
11 into one?

12 CHAIRMAN HOGEN: Right. Into the one
13 server, and --

14 MR. BONNER: No. I mean, from II to III.

15 Wouldn't that change the II into III also?

16 CHAIRMAN HOGEN: Well, I think you'd have
17 to separate your systems. I think you'd have to
18 have your Class II system and your Class III system.
19 Although, the way computer technology goes, they may
20 be able to do that in the same machine. I don't

21 know.

22 MR. BONNER: If I may, I was of the
23 impression that it was a bad thing, listening to
24 people, but it seems like you guys are trying to
25 make it pretty easy for everybody to do what they

1 want to do. I mean, giving us some guidelines so
2 that that way we would know exactly what is Class II
3 and Class III, so we wouldn't have to sue anybody
4 and nobody would sue us or stop us from doing what
5 we want to do to help our tribe.

6 CHAIRMAN HOGEN: Well, what some of our
7 critics are saying is we've gone too far. We've
8 slowed it down too much.

9 But what we say to them is Congress said
10 there was going to be two different classes. And if
11 we get to the point where you can't tell them apart,
12 then I'm afraid the states are going to say to
13 Congress, "Hey, they're not playing by the rules
14 anymore. Make them come to deal with us for
15 Class II as well." We don't want that to happen.

16 Secondly, states may say, "Well, they're
17 playing these machines and they're the only ones
18 that are doing it. Why are we just letting the
19 Indians do it? Let's let everybody do it."

20 Then who's going to drive out to the

21 reservation to play when you can do it in downtown

22 Los Angeles? We don't want that to happen, either.

23 MR. MIRELEZ: So who was going -- in the

24 Class II after the definitions and the guidelines

25 pass, who's going to regulate the number of machines

1 or anything like that, or is it just going to stay

2 open-ended?

3 CHAIRMAN HOGEN: Class II is strictly up to

4 the tribe. You can put as few or as many as you

5 want to.

6 Now, the state of New Mexico has --

7 MR. CHONEY: Arizona.

8 CHAIRMAN HOGEN: Arizona, in their compact,

9 provided for Class III games, and they also agreed

10 to the limit of how many Class II machines they

11 could have. That was freely negotiated by the two

12 parties. But ordinarily, the state has no business

13 in that Class II area.

14 MR. MIRELEZ: Okay.

15 MR. TORRES: Do you think what they play in

16 California can't be distinguished, as far as gaming

17 II can't be distinguished from gaming III?

18 CHAIRMAN HOGEN: If you go over to San

19 Manuel, which we did last night, most of their games

20 are compacted Class III. I don't know if they have

21 2,000, but they're close to that, I'm sure. They've
22 added, because they have so much business there, a
23 floor of Class II machines. And they all have the
24 little bingo card on it. They aren't exactly what
25 we have defined here, but they're close.

1 And the players -- you don't just push the
2 button and the machine automatically plays the rest
3 of the game. You've got to participate. If you
4 don't push the button when you've got the bingo,
5 you're sleeping, and the other guy is going to win.

6 But you can see the difference, you know,
7 but there are people there playing them. They could
8 be downstairs playing the Class III machines. There
9 are more people playing Class III, but it's a fast,
10 fun game.

11 So you can tell a difference under that
12 format, and that's what we think is important.

13 MR. CHONEY: Plus, the State's going to be
14 looking too. You know, they've limited, you know,
15 Class III machines. If they walk in there one day
16 and see twice the number that you're supposed to
17 have, they're going to say, "Wait a minute. We're
18 going to find out which ones are III and which ones
19 are II." And if it's leaning toward more on II,
20 they're going to come at you and say you can't do

21 that. See they're going to be watching.

22 MS. RESVALOSO: In the proposed rules, it
23 does say that, I believe, you -- or probably through
24 your staff is going to certify the laboratories that
25 perform the tests. So what are you looking for as

1 far as certifying them? I just read the part where
2 it says you can say no, you're not certified and not
3 approved.

4 CHAIRMAN HOGEN: Well, we want to, first of
5 all, make sure they're not crooks. We want to make
6 sure they are honest people. We want to make sure
7 they've got some experience and they know what
8 they're doing and if they're using equipment that is
9 good equipment, and that they have some financial
10 stability; that they aren't just going to take
11 somebody's money to test the machine and disappear.

12 And there are some good, established
13 laboratories out there, and I expect they'll apply
14 to be certified. And I expect, because, you know,
15 this is a growth industry, more labs will come
16 along, and they'll go through that process.

17 MS. RESVALOSO: Oh, good. So you'll do the
18 background and the research and making sure --

19 MR. CHONEY: That's one proposal that we've
20 discussed that we're eventually going to do. We

21 already have a section that does background
22 investigations on management companies. We'll
23 probably have them look at the backgrounds of some
24 of these companies.

25 Now, some of the well-known companies

1 that's known to us that we've worked with before,
2 we're not having trouble with them. But we think
3 that all of a sudden, out of the woodwork, there's
4 going to be a lot of companies that's going to come
5 forward, some guy thinks that he has the expertise
6 and the knowledge.

7 We're going to make sure he's not just some
8 fly-by-night guy that's going to come in there and
9 take advantage of the situation and come in there
10 and sell you a bill of goods and tell you that all
11 your machines are certified which, in fact, they're
12 not, and here comes the NIGC investigator to advise
13 you that you're not in compliance.

14 MS. RESVALOSO: So certifying them gives us
15 the -- like, say, that for some reason the State
16 says no, these are Class -- I can't get the two --
17 whatever. Class II? Class III?

18 MR. CHONEY: Class II.

19 MS. RESVALOSO: Class II, and we show them,
20 "Wait a minute. We've been certified." So that's

21 all we would need? Can they still take us to court?

22 Can they still -- I mean, is this -- I don't

23 understand.

24 MR. CHONEY: Well, if you have the

25 documentation and if it is from a legitimate

1 company --

2 MS. RESVALOSO: That you've approved.

3 MR. CHONEY: Yeah, that we've approved,
4 then you've got a good reason there.

5 MR. BONNER: Okay. So my next question
6 will be you guys will be providing a list?

7 CHAIRMAN HOGEN: Yes.

8 MR. CHONEY: Yes.

9 MR. BONNER: So anybody that's not on that
10 list, we would dare to venture that they are
11 questionable?

12 MR. CHONEY: That's correct.

13 MR. BONNER: So back to what I asked
14 before. How much time? Because, you know, I'm a
15 business-type person, you know. This is a
16 government and, you know, we got a business. And
17 what I'm thinking about is the possibility of maybe
18 adding some machines to what we have. And if we
19 wanted to do it in, say, nine months or a year --

20 CHAIRMAN HOGEN: Within nine months we sure

21 hope to be well on our way to have this six-month

22 block arrive.

23 MR. BONNER: We may have some of the first

24 certified machines by you guys then.

25 CHAIRMAN HOGEN: That could be. We'd come

1 out and help you cut the ribbon.

2 MR. BONNER: Okay.

3 MR. TORRES: Any other questions? Okay.

4 Off the record.

5 CHAIRMAN HOGEN: Okay. That will conclude

6 our classification discussion.

7 (End of Torres Martinez Desert Cahuilla

8 Indians discussions.)

9 (The proceedings were concluded at 3:30 p.m.)

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3 I, the undersigned, a Certified Shorthand

4 Reporter of the State of California, do hereby

5 certify:

6 That the foregoing proceedings were taken before

7 me at the time and place herein set forth; that any

8 witnesses in the foregoing proceedings, prior to

9 testifying, were placed under oath; that a verbatim

10 record of the proceedings was made by me using

11 machine shorthand which was thereafter transcribed

12 under my direction; further, that the foregoing is

13 an accurate transcription thereof.

14 I further certify that I am neither financially

15 interested in the action nor a relative or employee

16 of any attorney or any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed

18 my name.

19

20 Dated: _____

21

22

23

24

G. Joanne Bergren, CSR, RPR

25

Certificate No. 6334